73

SUPREME COURT OF THE UNITED STATES.

No. 297.

THE UNION INSURANCE COMPANY, CLAIMANT AND INTERVENOR, APPELLANT,

vs.

THE UNITED STATES AND CRAFTS J. WRIGHT ET AL.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America and Charles Black, sr., informant against the property, &c., hereafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That Cuthbert Bullitt, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the 29th day of March, in the year one thousand eight hundred and sixty-five, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, the square of ground situate in the first district of this city, bounded by New Levee, South Market, Fulton and Delord streets, together with all the buildings and improvements thereon.

2 II. That by the act of the Congress of the United States approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided, "that if, during the present or any future insurrection against the government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her or their agent, attorney or employee, shall purchase or acquire, sell or give, any property of whatever kind or description, with intent to employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such rebellion or resistance to the laws, or any person or persons engaged therein, or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture, wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

III. That the President of the United States did, on the 15th of April, 1861, declare by proclamation "that the laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law;" and

that on the 16th of August, 1861, he did reiterate said proclamation, and did declare that "such insurrection" still existed and had not been suppressed.

IV. 1. That the property herein above described was used and employed knowingly by the owner or owners thereof, in aiding, abetting, or promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used as a manufactory of guns and other materials of war for the use of the rebels in arms against the government of the United States.

2. That the property herein described was used and employed, knowingly, by the owner or owners thereof, in aiding and abetting persons engaged in the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of said act, and after the public proclamation of the President above mentioned, and after the 16th day of August, 1861, by being used as a manufactory of guns and other materials of war for the use of the rebels in arms against the government of the United States.

3. That the said property was purchased, and acquired, and sold, and given by the owner or owners thereof, and by his, her, or their agent or employee, with intent to use or employ the same for the purpose of aiding, abetting, and promoting the said insurrection and resistance to the laws, aftere the approval of said act, and after the public proclamations above mentioned, and after the 16th day of August, 1861, by being used as above set forth.

4. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding and abetting and promoting said insurrection and resistance to the laws, and of aiding, abetting, and promoting persons engaged therein, after the approval of said act, and after the proclamations above mentioned, and after the 16th day of August, 1861, by permitting its use as aforesaid.

5. That the owner or owners of said property, his, her, or their agent or employee, did suffer said property to be used or employed in aiding, abetting, and promoting the insurrection proclaimed by the President as aforesaid, and in aiding, abetting, and promoting a person or persons engaged in said insurrection, after the approval of act above mentioned, and after the proclamation of the President, duly made public on the 16th day of August, 1861.

V. That by reason of the premises, the property herein described became and was forfeited to the United States, and ought to be confiscated and condemned to the use of the said United States, as enemy property.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them, at some early day to be named therein, to appear and answer
3 this libel of information, and that an order of publication may

be made in the usual form, and that, all due proceedings being had, this honorable court may be pleased to decree for the condemnation and forfeiture of the said property to the use and ownership of the said United States and of Charles Black sr., informant; and he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
U. S. Attorney for the Eastern District of Louisiana.

4 United States circuit court, for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3342.

Whereas certain property described in the libel filed by the district attorney and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging, or in anywise appertaining, and all the right, title, and interest therein has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred sixty-one, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States attorney for the eastern district of Louisiana did, on the 4th day of April, A. D. 1865, file a libel of information in this court, praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is therefore, on this 5th day of April, in the year of our Lord eighteen hundred and sixty- , ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 24th day of April, 1865, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Picayune newspaper twice a week previous to said 24th day of April, A. D. 1865, the first publication to be on or before the 10th instant.

New Orleans, April 5th, 1865.

(Signed) E. H. DURELL, *Judge.*

5 The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the square of ground situate in the first district of this

city, in the square bounded by New Levee, South Market, Fulton and Delord streets, together with all the buildings and improvements thereon, rights, privileges, appurtenances and other hereditaments to the same belonging or in anywise appertaining, now libelled by the United States for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make your return according to law.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 5th day of April, A. D. 1865, and 89th year of the independence of the United States.

[SEAL.] (Signed) F. B. VINOT, *Deputy Clerk.*

6 *Marshal's return.*

Received April 5th, 1865; and having seized and taken into my possession the property described within, by authority of an order of seizure from the United States district attorney for the eastern district of Louisiana, I posted a copy of the warrant, the libel, and the order of the judge on the door of the court-house, and published monition in the Picayune, a daily newspaper printed and published in this city, on the 7th, 11th, 17th and 22d of April, 1865.

New Orleans, April 27th, 1865.

(Signed) M. EGAN, *Deputy U. S. Marshal.*

7 *Monition.*

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

In the United States circuit court for 6th circuit and eastern district of Louisiana, No. 3542.

In obedience to a warrant issued in this court, to me directed, in the above-entitled suit, I have seized and taken into my possession the square of ground situated in the first district of this city, in the square bounded by New Levee, South Market, Fulton and Delord streets, together with all the improvements, buildings, rights, privileges and appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of the said Cook & Brothers, the vein, now libelled by the United States, for the reasons assigned and set forth in the libel in the above-entitled suit now pending in the said circuit court. And I do hereby cite and admonish the owner or owners thereof, and all persons having
8 or pretending to have any right, title, and interest in or to the

same, to be and appear at a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said property should not be condemned and forfeited to the United States, agreeably to the prayer of the libel.

United States marshal's office, New Orleans, 6th day of April, 1865.

(Signed) CUTHBERT BULLITT, *U. S. Marshal.*

Intervention of Union Insurance Company filed April 18th, 1865.

THE UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

9 The petition of Achille Chiappella, president of the Union Insurance Company, a corporation duly established by law in the city of New Orleans, respectfully represents that they desire to intervene in the abovenamed cause for the preservation of their rights, and now propound to the court as follows:

First. That in the abovenamed cause the marshal of the United States for the eastern district of Louisiana has seized and taken into his possession a certain portion of real estate in the city of New Orleans, described in the petition as follows, to wit:

The square of ground situated in the first district of this city, in the square bounded by New Levee, South Market, Fulton and Delord streets, together with the improvements, buildings, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining; and by monition advertised in the New Orleans Picayune, has ordered all persons having or pretending to have any right, title, and interest in or to the same to be
10 and appear before the said circuit court on or before the third Monday after the date of the monition, to wit, the seventh day of April, 1865.

Second. That on the eighth day of October, 1861, by a public act before E. G. Gottschalk, a notary public of this city, and in order to secure the payment of a promissory note for the sum of three thousand five hundred dollars drawn by Leonce Burthe, a resident of the city of New Orleans, and held and owned by the said Union Insurance Company, the said Leonce Burthe did mortgage to the said Louisiana Insurance Company three undivided twenty-fifth parts of a portion of ground, one hundred and five feet eleven inches and five lines front on New Levee street, one hundred and twenty-nine feet five inches on Delord street, one hundred and twenty feet three inches on Fulton street. eighty feet and three inches [this reference app'd] on South Market street, and forty feet five inches and six lines on the division line separating the faubourg St. Mary from the faubourg Delord.

Third. That the above-described portion of ground, in the second article, is embraced in the square of ground described

11 in the monition of the United States marshal in this cause; and said portion of ground, now the property of said Leonce Burthe by virtue of a decree of the supreme court of the State of Louisiana rendered on the eighteenth day of April, 1859, by which the one undivided half of the said portion was adjudged to him, the said Leonce Burthe, and also by an act before S. Maguer, notary public of New Orleans, dated on the sixth day of June, 1859, by which the said Leonce Burthe purchased eleven-twelfths of said portion of land from his co-proprietors under the aforesaid judgment of the supreme court of the State of Louisiana.

Fourth. That on the fourteenth day of January, 1864, the said Union Insurance Company of Louisiana, in suit No. 10,960 of the docket of the sixth district court of New Orleans, applied for and obtained on the act of mortgage above described an order of seizure and sale against the aforesaid undivided three twenty-fifth parts of the said portion of ground described in article two; and, after due proceedings, the said portion was seized, advertised for sale according to law, and at sheriff's sale, on the twenty-sixth day of February,

12 1864, was adjudicated to this petitioner, Achille Chiappella, for account of the said L'a Union Insurance Company, for the sum of fourteen hundred dollars, whereby the said Union Insurance Company became the true and lawful owner of the undivided three twenty-fifth portions of the said portion of ground described in said article second, and has ever since remained such, and is now owner thereof exclusively, and no other person whatever is owner of the said three twenty-fifths.

Fourth. That in order to recover from the said Leonce Burthe the remainder of what was due on the said promissory note of three thousand dollars above described, the said Union Insurance Company commenced another suit in the said sixth district court of New Orleans, being No. 11,177 of the docket, and having obtained judgment against the said Leonce Burthe, did cause to be issued from said court a writ of fieri facias, by virtue of which the sheriff of the parish and city of New Orleans did, on the eleventh day of April, 1864, seize and take into his possession the remaining twenty-two

13 twenty-fifths of the said portion of ground described in the second article, and was proceeding to advertise and sell the same when he was stopped by a military order, which, until the present time, has prevented him from selling the said property.

Fifth. That by reason of the seizure made as described in the fourth article, the Union Insurance Company become entitled by law to a privilege, which it has never lost, but on the contrary still holds, on said portion of ground, entitling it to be paid by preference over all other creditors, as well as the United States, out of the proceeds of the said twenty-two twenty-fifth portions thereof, the amount of the judgment on which execution was issued from the said sixth district court as aforesaid.

Sixth. That of the various matters of fact set forth in the allegations of the libel filed by the United States the intervenor is ignorant, and cannot either admit or deny the same, and as to the legal

inferences to the drawer therefrom, he says they are not applicable to the Union Insurance Company.

Seventh. That all and singular the facts and allegations fore-
14 going are true, and that he is a loyal citizen of the United States.

Wherefore he prays that the property described in the libel may be restored to the Union Insurance Company, and for all general relief.

(Signed) DURANT & HORNOR—
4th 17, '65. For the Union Insurance Company.

Achille Chiappella, being duly sworn, says, that all the facts and allegations of the above intervention are true.

(Signed) A. CHIAPPELLA.

Sworn to and subscribed before me this 18th April, 1865.

(Signed) F. B. VINOT, *Deputy Clerk.*

Bond for costs of the Union Insurance Company, filed April 18, 1865.

UNITED STATES OF AMERICA, *Eastern District of Louisiana, to wit:*

Personally appearing before me, the undersigned United
15 States commissioner for the eastern district of Louisiana, aforesaid Achille Chiappella, acting as president of the Union Insurance Company as principal, and said Achille Chiappella in his own name as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States of America in the full sum of two hundred and fifty dollars lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents:

Whereas, in the matter of United States *vs.* Cook Brothers' Gun Manufactory, No. 3542 of the docket of the circuit court of the United States for the eastern district of Louisiana, a libel of information has been filed on behalf of the United States—

This obligation to be null and void, on condition that the said Union Insurance Company shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as
16 shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) A. CHIAPPELLA, [SEAL]
President Union Insurance Company.
A. CHIAPPELLA. [SEAL.]

Sealed and signed at the city of New Orleans this 18th day of April, 1865, in presence of

(Signed) CHARLES CLAIBORNE, [SEAL.]
U. S. Commissioner in and for the Eastern District of Louisiana.

Testimony for libellant, filed May 31st, 1865.

United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

17 Testimony taken before me, Charles Claiborne, United States commissioner, this 30th May, 1865, at 5½ p. m., in presence of district attorney for libellant, Thomas I. Durant for Union Insurance Company, claimant and intervenor.

William J. Andrews, being duly sworn for libellants, deposes and says:

I have resided in New Orleans about 38 years. I am acquainted with Cook & Brothers' gun factory. I was book-keeper in that factory in the years 1861 and 1862.

I went to the factory in June or July, 1861, and remained there till the following April, when the fleet came up; it was in operation all the time I was there. They manufactured arms, guns, carbines, cutlasses, and some swords for the confederate government. This work continued off and on until the arrival of the fleet. Cook & Brother sold them to the rebel government, and got pay in confederate money.

18 I heard of a contract being entered into by them, by which they were to get some $50,000, but I never saw it. I never heard the owners speak of it. I think they received $35 apiece for the rifles from the confederate government. I saw these arms leave the factory in the fall of 1861, and in early part of 1862. Some were sent to Virginia; don't know how many; others were sent to Mississippi to the Sunflower Guards. Some guns were repaired and sent to Missouri. I do not know of any being made for any troops that went from Louisiana. I saw some few confederate ordnance officers about the building now and then. The last guns sent away were those repaired and sent to Missouri shortly before the fleet arrived. Cook & Brothers had charge of the factory. This building, where the guns were made, is in the first district, the same as that now read to me, libelled in this case, in the square bounded by New Levee, South Market, Fulton and Delord streets. Cook & Brothers were at the factory while this work was going on.

Cross-examined:

19 They moved from Canal street to the libelled property in the fall of 1861—in October or November, 1861. I do not know that it was not before November.

I know the property did not belong to Cook & Brothers; I know they paid rent to Mr. Burthe; I believe they had a lease made before a notary; I do not know the notary's name. Cook & Brothers left

here about the time the fleet came up. I have never seen them since. I heard that one of them was dead. They were Englishmen, I believe.

(Signed) WM. J. ANDREWS.

Sworn to and subscribed before me this 30th May, 1865.

(Signed) CHS. CLAIBORNE, *U. S. Com'r.*

J. M. Hofer, being duly sworn for libellant, deposes and says:

I have resided in this city about 16 years. I am acquainted with Cook & Brother's gun factory, situated in the first district in this city, in the square bounded by New Levee, South Market, Fulton and Delord streets. I was employed there about 4 or 5 months before it broke up. It broke up when the fleet arrived in April, 1862, I believe.

20 I was a common day-laborer there. While I was there, there were swords, guns, and bayonets made; they were rifled guns; I suppose they were made for the confederate government. I am certain that the place where these guns were made was in the square bounded as above set forth. I worked on the guns myself. There were some guns sent away from the factory; don't know where they went; don't know who paid for them, nor the price. The work broke up immediately on the arrival of the fleet. Cook & Brothers left the city; they went up the river. They were still furnishing rifles when the fleet arrived in April, 1862. No cannon were made there.

Cross-examined:

When I first went to work the factory was at the place libelled; I do not know how long it had been there. I worked at finishing in the factory; was brought up a cabinet maker; did some stocking there. During the time I was there I was a friend of the United States. I was compelled to do this work through want and not from choice. I hardly think any one at that time would have been permitted

21 to speak friendly of the Union. It would not have been safe for any one to attempt to prevent any other from aiding the rebel government. Had any one attempted to prevent Messrs. Cook & Brothers from making arms in that building, in all probability he would have been imprisoned, as such is my opinion.

Re-direct:

There must have been, at the time I was employed there, some 400 men, more or less, at work in the building. Cook & Brothers paid me my work.

(Signed) JOHN M. HOFER.

Sworn to and subscribed before me this 30th May, 1865.

(Signed) CHS. CLAIBORNE, *U. S. Commissioner.*

John Hofer, being duly sworn for libellant, deposes and says:

I have resided in this city for 15 years. I am a machinist by trade. I was employed in Cook & Brother's gun factory in the fall of 1861 and in 1862. I was employed in the building on square bounded by Levee, South Market, Fulton and Delord streets, as well as

22 in the building No. 1. Canal street. We moved from Canal street to the other building during the fall of 1861. The date I cannot remember. I worked in the building libelled until the arrival of the fleet. I was a workman there, not foreman. There were guns, Enfield rifles, and swords, and sword-bayonets made there. The manufacture of these arms continued until the arrival of the fleet in 1862. These arms were made for the confederate government.

There were some 400 men employed in this factory. Cook & Brothers paid me for my work. I was making gun-locks in the factory. Without doubt these arms were made for the rebels in arms against the government of the United States. I saw some of these arms boxed up and shipped off. In the building No. 1 Canal street the same work had been going on, but it was not so extensive. It was about the time it was beginning to get cold that the work ceased in the building at No. 1 Canal street.

There could not have been more than fifty workmen employed in that building. They ceased operations there about 2 weeks
23 after we moved up to the Fulton and South Market building.

They made rifles in the building No. 1 Canal street. Messrs. Cook & Brothers were in the factory all the time the work was going on. They agreed to make some rifles as low as $35 or $25 dollars. Some were sold as high as $125.

(Signed) JNO. J. HOFER.

Sworn to and subscribed before me this 30th May, 1865.

(Signed) CHS. CLAIBORNE, *U. S. Commissioner.*

J. H. Darling, being duly sworn, deposes and says for libellant:

I have been a resident of this city for the past five years. I am at present a claim agent; was educated for commercial pursuits. I have been in the United States army from 1863 to 1864. I was in the city in 1861 and 1862. Know Cook Brothers' gun factory, on corner of Levee and South Market streets.

It was reported in the shop that Cook & Brothers contracted with the confederate government for the manufacture of arms. I
24 don't know what was the amount of the contract.

There were rifled muskets, sabres, bayonets, and accoutrements made there, and some artillery and cavalry sabres. I only know of this positively from the latter part of November, 1861, to the 1st week in January, 1862.

I saw arms boxed and directed to Richmond, and others to Memphis. I do not know to whom they were sold; I believe these boxes were directed to an ordnance officer.

I know nothing about the building No. 1 Canal street.

Cross-examined:

I was employed in the factory from about the 20th November, 1861, until the last week in January, 1862. I do not know how long it had been in operation before I went there.

(Signed) J. H. DARLING.

Sworn to and subscribed before me this 30th May, 1865.

(Signed) CHS. CLAIBORNE, *U. S. Commissioner.*

25 *Order, cause fixed for trial, from the minutes of June 2d, 1865.*

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

On motion of the district attorney, ordered that this cause be assigned for trial for Saturday the 10th instant, at 11 o'clock a. m., and that intervenor's counsel be notified thereof.

Notice of trial.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

You are hereby notified that this case is assigned for trial
26 for Saturday, the 10th day of June, A. D. 1865, at 11 o'clock a. m.

By order of the court.

Witness my hand and seal of the said court, at New Orleans, this 2d day of June, A. D. 1865.

(Signed) F. B. VINOT, *Deputy Clerk.*

To DURANT & HORNOR, Esqrs.

Marshal's return.

Received June 3d, 1865; and on the 5th day of same month and year served a copy of this notice on Durant & Hornor, esqrs., by leaving it in hands of F. J. Durant, esq., he being one of the firm of Durant & Hornor, esqrs., attorney.

June 6th, 1865.

(Signed) M. EGAN, *Deputy U. S. Marshal.*

Intervention of Crafts J. Wright, filed June 6th, 1865.

27 THE UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

The petition of Crafts J. Wright, a citizen of the State of Ohio, respectfully represents that he desires to intervene in the abovenamed cause, for the preservation of his rights, and to this honorable court respectfully propound as follows:

First. That in the abovenamed cause the marshal of the United States for the eastern district of Louisiana has seized and taken into his possession a certain portion of real estate in the city of New Or-

leans, described in his petition as follows, to wit: The square of ground situated in the first district of this city, in the square bounded by New Levee, South Market, Fulton and Delord streets, together with all the improvements, buildings, rights, privileges, ap-
28 purtenances, and other hereditaments to the same belonging or in anywise appertaining, and by monition advertised in the New Orleans Picayune has ordered all persons having or pretending to have any right, title, or interest in or to the same to be and appear before the said circuit court, on or before the third Monday after the date of the monition, to wit, the seventh day of April, 1865.

Second. That on the 25th day of April, 1864, petitioner obtained judgment against Leonce Burthe, a resident of the city of New Orleans, in this honorable court, for the sum of eight thousand two hundred and forty-seven dollars and seven cents, with interest thereon, at the rate of five per cent. per annum, from the 1st day of June, 1860, till paid, and costs of suits entitled Crafts J. Wright *vs.* Leonce Burthe, and numbered 3409 on the docket of this honorable court; and, having obtained said judgment, petitioner did cause to be issued from said court a writ of fieri facias, by virtue of which the marshal of this honorable court did, on the twenty-fifth day of
29 August, 1864, seize and take into his possession all the rights, titles, and interest of Leonce Burthe in and to the above property, the square situated in the first district, bounded by New Levee, South Market, Fulton and Delord streets, &c., hereinbefore in the first article of this intervention described as having been seized by the marshal of this honorable court, in the suit now pending; and that the said marshal proceeded to advertise the same in the "True Delta" newspaper, on the 10th March, 1865, and was proceeding according to law to sell the same to satisfy the judgment of petitioner against said Leonce Burthe.

Third. That by reason of the seizure made and described in the second article of this intervention, petitioner became entitled by law to a privilege and lawful lien, which he has never lost, but, on the contrary, still holds on said portion of ground, entitling him to be paid by preference over all creditors, if any such there be, and by preference to the United States, out of the proceeds of the said property, the amount of the judgment on which execution was issued from this honorable court as aforesaid.

30 Fourth. That of the various matters of fact set forth in the allegations of the libel filed by the United States, the intervenor is ignorant, and cannot either admit or deny the same, and as to the legal inferences to be drawn therefrom, he says they are not applicable to intervenor, Crafts J. Wright.

Fifth. That all and singular the facts and allegations foregoing are true, and that intervenor is now and ever has been a loyal citizen of the United States.

Wherefore intervenor, Crafts J. Wright, claims the above-described property, and prays that the property described in this libel may be restored to him; and for all general and special relief.

(Signed) SULLIVAN, BILLING & HUGHES,
Attorneys for Intervenor, Crafts J. Wright.

Robert H. Morris, being duly sworn, says that all the facts and allegations of the above intervention are true; that he is the agent of Crafts J. Wright, the intervenor, and that he is authorized by said Wright to make this claim and intervention, who is now absent from the State of Louisiana.

(Signed) ROB'T H. MORRIS.

31 Sworn to and subscribed before me this 6th day of June, 1865.

(Signed) F. B. VINOT, *Deputy Clerk.*

Let this petition of intervention be filed on giving bond as law directs.

New Orleans, 6 June, 1865.

(Signed) E. H. DURELL, *Judge.*

Bond of costs of R. H. Morris, agent of Crafts J. Wright, filed June 6th, 1865.

UNITED STATES OF AMERICA, *Eastern district of Louisiana, to wit:*

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana aforesaid, Robert H. Morris, agent for Crafts J. Wright as principal, and said Robert H. Morris, in his own name as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States in the full sum of two hundred and fifty dollars lawful money of the United States, to be levied of their goods, chattels, lands, and tene-

32 ments, the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators firmly by these presents.

Whereas in the matter of United States *vs.* Cook & Brother's Gun Manufactory, No. 3542 of the docket of the circuit court of the United States for the eastern district of Louisiana, a libel of information has been filed on behalf of the United States—

This obligation to be null and void on condition that the said Craft J. Wright, or his agent, shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) ROBT. H. MORRIS, *Agent.* [L. S.]

(Signed) ROBT. H. MORRIS. [L. S.]

Signed and sealed, at the city of New Orleans, this 6th day of June, 1865, in presence of—

(Signed) CHS. CLAIBORNE,

U. S. Commissioner for the Eastern District of Louisiana.

33 *Intervention of P. L. Burthe and al., filed June 7th, 1865.*

To the honorable judges of the circuit court of the United States for the sixth circuit and eastern district of Louisiana:

The petition and intervention of Pierre Leopold Burthe; Mistress Marguerite Felicie Burthe, wife of Louis Frederic Foucher, and said Foucher to authorize his wife, of Paris, France; Henry Clement Millaudon, of the parish of Jefferson, acting as dative tutor of the minor Dominique Francois Edmund Burthe; Louis Florval Generes, acting as attorney in fact of Mistress Justine Theodorine Abat, widow of the late Joseph Antoine Henry Burthe and now the wife of Francois Eugene Garreau, of Paris, France, the natural tutrix of her two minor children, Francois Joseph Paul Louis Burthe and Dominique Francois Burthe; Mistress Marguerite Suzanne Delord Sarpy, widow of the late Andre Burthe d'Amelet, of Paris, France—all the
34 abovenamed intervenors, who are domiciliated and residing in Louisiana, loyal citizens of the United States, respectfully represents:

That in pursuance to the public notice given by the United States marshal for the State of Louisiana to all persons having any right, title, and interest in the property of Cook & Brothers, or pretending to be owner or owners thereof—said property described in said notice—and to be and appear before this honorable court to interpose their claims and to make their allegations on their behalf—

And now come into court the abovenamed parties, who, reserving all exceptions to the present proceedings if necessary, intervened for their own interest, and exhibit this their libel, and claim as their own the property described in said notice, now being unto the custody of the above United States marshal in virtue of a warrant issued by this honorable court in the case of the United States *versus* Cook Brothers' Gun Manufactory, No. 3542 of the docket of said United States circuit court; and thereupon said intervenors do allege and articulately propound: That they are the lawful owners of eleven undi-
35 vided twelfths of twelve certain lots or portions of ground situate on the lower part of the battue of suburb Delord, in this city of New Orleans, numbered from one to twelve, inclusive, according to a plan of Allon d'Hemecourt, surveyor; said lots or portions measure as follows, to wit: Lot No. 1, one hundred and six feet eleven inches five lines front on New Levee street, 129 feet 5 inches front on Delord street, 123 feet 3 inches 2 lines front on Fulton street, 81 feet 3 inches five lines front on South street, and 45 feet 6 inches 4 lines on the division line between suburb St. Mary and Delord, together with the two-story brick warehouse thereon, known as the Fulton warehouse.

Lot No. 2, being the whole square, measures one hundred and twenty feet five inches five lines front on Front street, one hundred and twenty feet three inches and two lines front on Fulton street, one hundred and twenty-nine feet five inches front on Delord street, and one hundred and twenty-eight feet eight inches two lines front on South Market. Lot No. 3, being an entire square, measures 120 feet

5 inches 5 lines on each Delta and Front streets, and one hun-
36 dred and twenty-four feet eleven inches two lines on each of Delord and South Market streets.

Lot No. 4, being an entire square, measures 120 feet 5 inches 5 lines on each of Water and Delta streets, and one hundred and twenty-four feet eleven inches and two lines on each of Delord and South Market. Lot No. 5, in square bounded by Front, Fulton, South Market and North Market streets, is of a triangular form, and measures forty-two feet three inches two lines on Front street, six feet eight inches three lines on Fulton street, one hundred and twenty-eight feet five inches and seven lines on South Market street, and one hundred and twenty-three feet two inches two lines on the division line of the suburb St. Mary and Delord. Lot No. 6, comprised within Front, South Market, Water and St. Joseph streets, measures fifty-nine feet seven inches three lines front on Front street, three hundred and twelve feet six inches three lines front on South Market street, one hundred and forty-six feet four inches two lines front on Water street, and three hundred feet on the division line between Suburb St. Mary and Delord. Lots numbers 7, 8, 9, 10, 11 and 12, comprised
37 between Calliope and Water streets, the division line between suburb St. Mary and Delords and the river Mississippi, with the rights of future accretion in front of said lots, and measure each sixty-five feet four inches front on Water street, and closing towards the river.

That those intervenors are owners of the above-described property libelled in part or in totc in this case, as having inherited of the same from their ancestors, and that said defendants, Cook Brothers, have no title of any kind whatsoever to it, and that the same is to be returned in kind to these intervenors, as owners thereof, and which is described in the notice of the United States marshal, and in the libel herein filed, as follows: "A square of ground situate in the fourth district of this city, in the square bounded by New Levee, South Market, Fulton and Delord streets," said Cook & Brothers having never been the owners of the same.

Wherefore your intervenors pray that this honorable court do pronounce in favor of their demand that they be recognized as the only and exclusive owners of the property described in this present
38 intervention and libelled in this case, and that the seizure of the same by the United States as the property of Cook & Brothers be declared null, void, and illegal, and said intervenors authorized to take possession of the same as owners thereof; and they further pray for such other relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

(Signed) L. CASTERA, *of Counsel.*
(Signed) L. F. GENERES.
(Signed) C. MILLAUDON.

Sworn to and subscribed before me this 7th June, 1865.
(Signed) F. B. VINOT, *Deputy Cl'k.*

Let this intervention be filed.
New Orleans, June 7th, 1865.
(Signed) E. H. DURELL, *Judge.*

Bonds of C. Millaudon and L. F. Generes, filed June 7th, 1865.

39 UNITED STATES OF AMERICA,
Eastern district of Louisiana, to wit:

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana aforesaid, Henry Clement Millaudon, acting as dative tutor of the minor E. Burthe as principal, and Henry Clement Millaudon, in his own name as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States of America, in the full sum of two hundred and fifty dollars lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators firmly by these presents.

Whereas in the matter of United States *vs.* Cook & Brothers' Gun Manufactory, No. 3542 of the docket of the circuit court of the United States for the eastern district of Louisiana, a libel of information has been filed on behalf of the United States—

This obligation to be null and void on condition that the said H. C. Clement, dative tutor, shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered by the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) C. MILLAUDON, *Tutor.* [L. S.]
(Signed) C. MILLAUDON. [L. S.]

Signed and sealed, at the city of New Orleans, this 7 day of June, 1865, in presence of—

(Signed) CH'S CLAIBORNE, [SEAL.]
U. S. Commissioner in and for the Eastern District of Louisiana.

40 UNITED STATES OF AMERICA,
Eastern district of Louisiana, to wit:

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana aforesaid, L's Florval Generes, att'y in fact, &c., as principal, and said L. F. Generes in his own name as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States in the full sum of two hundred and fifty dollars lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators firmly by these presents.

Whereas in the matter of United States *vs.* Cook & Brothers' Gun Manufactory, No. 3542 of the docket of the circuit court of the United States for the eastern district of Louisiana, a libel of information has been filed on behalf of the United States—

This obligation to be null and void on condition that the said L's F. Generes, as attorney, &c., shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) L. F. GENERES, *Agent, &c.* [SEAL.]
(Signed) L. F. GENERES. [SEAL.]

Signed and sealed, at the city of New Orleans, this 7th day of June, 1865, in presence of—

(Signed) CH'S CLAIBORNE,
U. S. Commissioner, in and for the Eastern District of Louisiana.

41 *Demurrer to claim of Cratfs J. Wright, filed June 8th, 1865.*

UNITED STATES
vs.
COOK & BROTHER'S GUN FACTORY. } No. 3542.

To the honorable the judges of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana:

And the said libellants, by Rufus Waples, U. S. district attorney for said district, as to the claim in intervention of him, the said Crafts J. Wright, intervenor, by him above pleaded, saith that the same and the matters and things therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said Crafts J. Wright to have or maintain his aforesaid claim in intervention against the property libelled; and that they, the said libellants, are not bound by law to answer the same; and this they are ready to verify. Wherefore, for want of a suffi-
42 cient declaration in intervention in this behalf, said libellants pray judgment by reason of the matters and things set forth in said libel, and that the said Crafts J. Wright may be barred from having or maintaining his aforesaid action against the property libelled in this case, &c.

(Signed) RUFUS WAPLES, *U. S. Attorney.*

U. S. circuit court.

Demurrer to claim in intervention of Union Insurance Company, filed June 8th, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN FACTORY. } No. 3542.

To the honorable the judges of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana:

And the said libellants, by Rufus Waples, U. S. district at-
43 torney for said district, as to the claim in intervention of the Union Insurance Company of Louisiana, intervenors, by them above pleaded, saith that the same and the matters and things there-

in contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said Union Insurance Company to have or maintain their aforesaid claim in intervention against the property libelled; and that they, the said libellants, are not bound by law to answer the same; and this they are ready to verify. Wherefore, for want of sufficient declaration in intervention in this behalf, said libellants pray judgment by reason of the matters and things set forth in said libel, and that the said Union Insurance Company may be barred from having or maintaining their aforesaid action against the property libelled in this case, &c.

(Signed) RUFUS WAPLES, *U. S. Attorney.*

Order and continuance, from the minutes of June 10, 1865.

44 UNITED STATES
vs.
COOK & BROTHERS' GUN MANUFACTORY. } No. 3542.

Upon the application of L. Castera, esq., with the consent of the district attorney, it is ordered that the trial of this cause be postponed until Thursday next, 15th instant, at 11 o'clock a. m.

Testimony taken in open court, filed June 15th, 1865.

UNITED STATES
vs.
COOK & BROTHERS' GUN FACTORY. } No. 3542.

William J. Andrews, sworn for U. S., says this manufactory is situated near St. Mary's market, in square bounded by Delord, Fulton, South Market, and New Levee streets. Cook & Brothers
45 moved into that factory about 1st October, 1861. They had obtained a lease from Burthe in Sept., '61. They began to work immediately, and manufactured guns, swords, and cutlasses.

Cross-examined:

I have been in Cook & Brothers' employ as book-keeper. Had nothing to do with the work. I kept the accounts. I do not now pretend to name the particular day on which the defendants moved into the factory, but it was about 1st October, 1861.

The counsel for intervenors calling the attention of the witness to the fact that in his previous examination he said that Cook & Brothers went into the factory in the fall of 1861, in the month of October or November—says, I was not then prepared, but since that time I have reflected upon the matter; they moved in there about 1st Oct., 1861. Being asked, Did you communicate these further reflections to any one? says, No; I had no conversations with any one on the subject. I cannot swear that Cook & Brothers went into the factory on 1st October, 1861. I have no impression that they came there
46 a short time before or after. Before the 1st October, 1861, this place was a public warehouse. It had to be fitted up to be used as a factory. It took them from 3 to 4 weeks to put the machinery in order, so as to be able to operate.

Re-ex.:

They had to wait several days on account of some goods that were in the warehouse; they could not move in before these goods were out. They had to wait for some days after the 17th September, 1861, till the goods were out.

By the court:

Cook & Brother, prior to their removal up town, used to manufacture arms on Canal street. The goods were removed from the warehouse prior to 1st October, 1861, I think.

Re-cross-examined:

I don't recollect a single instance in which the defendants received orders from planters in 1861.

District attorney offered admiralty warrant, monition, and marshal's return, and the testimony of the witness on file; also lease marked "A."

47 Union Insurance Company offered documents "B, C, D, E, F, G, H."

Crafts J. Wright offered documents "I and K."

P. L. Burthe and *al.* offered documents L and M; also decree of supreme court in the case of Heirs Delord *vs.* City of New Orleans. Copy to be furnished.

L. F. Generes, sworn for P. L. Burthe and *al.*, says: I am the agent of Mr. and Mrs. Gareau and the minors Burthe and *als.* I have received rents from Leonce Burthe for this property. Leonce Burthe collected the rent from the lessees and paid it over to me. This rent was regularly credited to the minors. The minors I represent reside in France. Leonce Burthe had the general management of the property, and received rent up to the time the federal troops arrived. Mr. Burthe has regularly accounted to me for the rent of the property till the federals arrived—till the fleet came up. I have paid the proportion in insurance and taxes, for account of the minors, till

48 the fleet came up. I know that Cook & Brothers, in 1861, manufactured arms; this was of general notoriety. United States troops have taken possession of the place. I made several efforts to get it released, but without success. The government made use of it. In May, 1862, Leonce Burthe left the city under the orders of General Butler. He has returned since.

H. C. Millaudon, sworn for P. L. Burthe and *als.*, says: I received the rent from Victor Burthe, administrator. Received such rent for the minor, Edmond Burthe. I mean that I received such rent for the property libelled herein.

Cross-examined:

I think the last rent I received was in March, 1862.

Document A.—(Lease) offered by dist. attorney, filed June 15, 1865.

STATE OF LOUISIANA, *City of New Orleans:*

49 Be it known, that on this seventeenth day of September, eighteen hundred and sixty one, before me, Selim Maguer, a notary public duly commissioned and sworn in and for this city and parish of New Orleans, State of Louisiana aforesaid, personally came and appeared Leonce Burthe, of this city, who declared that he does, by these presents, lease and let for and during the full term and space of three years, to commence and be computed from the first day of October next, eighteen hundred and sixty one, unto Messieurs Ferdinand William Charles Cook and Francis L. Cook, copartners in this city, under the style and firm of "Cook & Brother," here present and accepting for themselves and their heirs, a certain lot or portion of ground, situate in this city, measuring about one hundred and six feet eleven inches five lines front on New Levee street, one hundred and twenty-nine feet five inches front on Delord street, one hundred and twenty feet three inches and two lines front on Fulton street, eighty-one feet three inches and five lines front on South street, and forty-five feet six inches and four lines on the division line of suburbs St. Mary and Delord, together with the two-story brick ware-
50 house thereon known as the Fulton warehouse; to have and to hold the said premises unto the said lessees for and during the full term and space aforesaid.

In consideration of said lease the said lessees hereby bind themselves and their heirs to pay hire and rent for said premises at the rate of thirty-six hundred dollars ($3,600) per annum, being three hundred dollars per month, and to pay the same monthly at the end of each and every month of this present lease as the same shall fall due, on the simple receipt of said lessor, or that of his lawful representative; and it is moreover understood and agreed, that if at any time the said rent for any one or more months should be in arrears for more than fifteen days after the expiration of either month, then the said lessor shall have the right of rescinding this lease, and the subsequent payment of the rent by said lessees shall not revive this lease without the consent of said lessor.

It is also agreed that inasmuch as said lessees intend to establish in said warehouse engines, machinery, &c., therefore they shall pay all premiums of insurance which may be charged by the in-
51 surance company over and above the premium now charged to said lessor for insuring said warehouse. The said premises being now in perfect order and condition, well provided with keys, locks, fastenings, &c., the said lessees hereby bind themselves to keep the same and deliver them at the expiration of this lease in the like good order and condition, the usual wear and tear and accidents by fire and hurricane excepted; and it is further agreed that said lessor shall not be called upon for any repairs whatsoever during the term of this lease, all of which repairs, including those of the roofs, walls, and floors shall be at the cost and charge of said lessees; the said lessees, however, shall have the right to take up the floor of the lower

story (which floor is now in bad condition) without being obliged to replace the same.

And the said lessees further agree and bind themselves that in case they should make any changes in said building for the carrying on of their business, to replace the same at the end of this present lease in the same condition in which they now receive said building, it being well understood that said lessees shall not make any changes or alterations by which the walls' foundations on said building may
52 be injured. The said lessees shall not have the right of transferring this lease or of under-letting said premises without the written consent of said lessor, or that of his lawful representative.

It is further agreed that any violation of this lease, or of any part thereof, by said lessees shall be sufficient cause for annulling this lease by said lessor, and upon such violation having occurred, and in case of any default in payment of rent as above stated, the said lessor may give notice in writing thereof, and demand possession of said premises in ten days from such notice, and the said lessees hereby bind themselves to surrender the same as if the full term of this lease had expired. The said lessees shall have the privilege of purchasing said presently leased property within any time from the first day of October next until the thirtieth of September, eighteen hundred and sixty-two, for the price and sum of thirty-six thousand dollars, ($36,000,) payable one-third cash and the balance at a credit of one and two years, in notes to be drawn by the said lessees to their own order and by them to be indorsed, of equal amounts, and to bear interest at the rate of eight per cent. per annum from date till paid, to be secured by mortgage on said property, with the clause of non
53 aliendo, lawyer's fees, in case of non-payment of said notes, at five per cent. on the amount sued for, and transfer of policy; and from and after the thirtieth of September, eighteen hundred and sixty-two, and until the expiration of this lease, the said lessees shall have the refusal of said property, or the privilege of purchasing the same, at such price and on such terms and conditions as may be offered by any other party or parties.

Done and passed in my office at New Orleans aforesaid, on the day, month and year first before written, in the presence of James Fahey and Edward G. Gottschalk, competent witnesses, who sign these presents with the said appearers and me, notary, after reading thereof.

(Signed) FRANCIS L. COOK.
L. BURTHE.
JAS. FAHEY.
J. W. C. COOK.
E. G. GOTTSCHALK.
S. MAGUER, *Notary Public.*

A true copy.
New Orleans, 3d June, 1865.
[SEAL.] (Signed) S. MAGUER, *Not. Pub.*

Document B.—Offered by Union Insurance Company.—Filed June 15th, 1865.

54 No. ——. Mortgage.—State of Louisiana to City of New Orleans.

Be it known that on this day, before me, Edward G. Gottschalk, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, and in presence of the witness hereinafter named and undersigned, personally came and appeared Leonce Burthe, of this city, who declared and acknowledged that he is justly and truly indebted unto Union Insurance Company of New Orleans in the full sum of three thousand five hundred dollars, for the reimbursement whereof he has made and subscribed a certain promissory note dated this day, to the order of and indorsed by himself, for said sum of three thousand five hundred dollars, payable in one year, at the Louisiana State Bank in this city, and stipulating to bear interest at the rate of eight per centum per annum from maturity, if not then paid, until final liquidation.

Now, in order to secure in capital and eventual interest the
55 full and final payment of the said promissory note, (which note, after having been by me, notary, duly paraphed in order to identify the same herewith, has been delivered unto Achille Chiappella, esquire, president of said company here present, acknowledging the receipt thereof and accepting these presents,) he, the said Leonce Burthe, does, by these presents, for himself and his heirs, specially mortgage and hypothecate unto the said Union Insurance Company of New Orleans, and such person or persons who may eventually be the holder or holders of the said promissory note, the three undivided twenty-fifths of a certain portion of ground situated in the suburb Delord, designated by the No. one on a plan made by Allon d'Hemecourt, surveyor of this city, dated the twenty-third of April, 1859, annexed for reference to an act of inventory and appraisement passed before Selim Maguer, notary public, on the twenty-fifth of April, 1859, which portion of ground measures one hundred and six feet eleven inches five lines front on New Levee street, one hundred and twenty-nine feet five inches front on Delord street, one hundred and twenty feet three inches two lines
56 front on Fulton street, eighty-one feet three inches and five lines front on South street, and forty-five feet six inches four lines on the division line of the suburb St. Mary and Delord, together with the three undivided twenty-fifths of the two-story brick warehouse thereon, known as the Fulton warehouse.

One undivided twelfth of said property belongs to said Burthe by virtue of a judgment of the supreme court of this State rendered on the eighteenth of April, 1859; and by act passed before Selim Maguer, notary public, on the sixth of June, 1859, he, said Leonce Burthe, purchased the other eleven-twelfths of said property from his co-proprietors under said judgment.

The said premises so to remain mortgaged and hypothecated until

the full and final payment of the aforesaid promissory note in capital and eventual interest, the said mortgagor hereby binding himself and his heirs not to sell, alienate, nor incumber the same to the prejudice of these presents.

And the said mortgagor further declared that he does, by these presents, bind and obligate himself and his heirs to cause all and singular the buildings and improvements on the portion of ground
57 afore described, to be insured and kept against the risk of fire by one of the insurance offices in this city up to at least the amount of and until the full and final payment of said afore-described promissory note, and to transfer and deliver unto the said mortgagee the policy or policies of such insurance or insurances, in default whereof said mortgagee, and any and all holders of said promissory note, is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said mortgagor.

And the said mortgagor further declared that he does, by these presents, consent, agree, and stipulate that in the event of the said promissory note not being punctually paid at its maturity, it shall be lawful for, and he does hereby authorize the said mortgagee, or any other holder or holders thereof, to cause all and singular the premises hereinbefore described and therein mortgaged to be seized and sold under executory process (issued by any competent court) without appraisement to the highest bidder, payable cash, the said mortgagee hereby expressly dispensing with and every appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement and of all laws or part of laws relative to the appraise-
58 ment of movable or immovable effects, &c., seized and sold under executory or other legal process, the said mortgagor hereby confessing judgment in favor of said mortgagees, and such person or persons who may be the holder or holders of said promissory note for the full amount thereof, capital and interest, and together with all costs, charges, and expenses whatsoever.

And the said mortgagor further declared that he does, by these presents, bind and obligate himself and his heirs to pay and reimburse unto said mortgagees and such person or persons who may be the holder or holders of said promissory note, all such lawyer's or attorney's fees, together with all such costs, charges, and expenses as said mortgagees or any such holder or holders shall or may incur or pay, in the event of the non-payment of said promissory note at maturity, said attorney's fees, however, to be fixed at 5 per cent. on the amount sued for.

Now, to secure the faithful performance of the foregoing obligations and the reimbursement and payment of the said lawyer's or attorney's fees, costs, charges, and expenses aforesaid, and the reimbursement and payment of all premium or premiums as shall be paid by the said mortgagee or any holder or holders of the aforesaid promissory
59 note, in causing insurance to be effected on the default of said mortgagee as aforesaid, he, the said mortgagor does, by these presents, further specially mortgage and hypothecate the therein-

before described premises, unto and in favor of said mortgagees and all holders of said promissory note.

According to the annexed certificate of the recorder of mortgages in and for this city and parish, dated this day, it appears that the said property stands incumbered by the first lien and privilege in favor of the second draining district, resulting from a judgment rendered by the third district court of New Orleans on the ninth of February, 1861, to secure all costs of drainage on said portion of ground.

The said Leonce Burthe declared that he is neither tutor nor curator of any minors, interdicted persons, or absentees.

And thereupon personally came and appeared and intervened to this act Mistress Henriette Pollock, of lawful age, wife of said Burthe, who being duly authorized and assisted by her said husband, took cognizance of the foregoing act of mortgage, which I, notary, carefully read and explained to her, and having so done, she declared that it was her intention, not only to ratify said mortgage, but to make renunciation of all rights she has, by mortgage or otherwise, on
60 the property so mortgaged, upon which I, notary, declared to her separately and apart from her said husband and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage on all the property of her said husband, and upon that of the community in case she should renounce thereto: First, for the restitution of her dower and the reinvestment of dotal property brought by her in marriage. Second, for the restitution of dotal property by her acquired during marriage, by inheritance, donation, or otherwise. Third, for indemnity against all debts contracted or which she may hereafter contract with her said husband. Fourth, for such of her paraphernal property and funds as may have been alienated by her said husband, or of which he has had or may have the administration or enjoyment, or of which he may otherwise have benefited. Fifth, for nuptial presents made to her by her said husband or others. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against said property, whether under mortgage, privilege, or otherwise. Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said act of mort-
61 gage, and to dispossess herself of all rights and liens which she has upon said property, whether by marriage contract, dower, donation, or otherwise; and the said husband being now again present before me and authorizing his said wife, she again declared that she does hereby formally renounce, henceforth and forever, all and singular her said rights, and transfer the same to the said mortgagees and their assigns, to be had and held by them and by them enjoyed, in law and thereout; and she hereby binds herself and her heirs to the said mortgagees and their assigns, that she and they shall and will, at all times, acknowledge the validity of the present mortgage and of the renunciation she now makes of all rights which she has or may have in and to the property so mortgaged, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby re-

nouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans, the eighth day of October, eighteen hundred and and sixty-one, in presence of Selim Maguer and James Fahey, witnesses residing in this city, who have signed their names with the said appearers and me, notary, after reading
62 thereof.

(Signed) L. BURTHE.
(Signed) HENRIETTE BURTHE.
(Signed) A. CHIAPPELLA, *Pres't.*
(Signed) S. MAGUER.
(Signed) JAS. FAHEY.
(Signed) E. G. GOTTSCHALK, *Notary Public.*

A true copy. New Orleans, 30th May, 1865.
(Signed) E. G. GOTTSCHALK, *Not. Pub.*

Document "C."—"Petition" offered by Union Insurance Company. Filed June 15th, 1865.

To the honorable judge of the sixth district court of New Orleans:

The petition of the Union Insurance Company, of New Orleans, represented by its president, Mr. Achille Chiappella, who resides in the city, respectfully shows:

That Mr. Leonce Burthe, also of this city, is justly indebted to the said company in the full sum of three thousand five hundred dollars, by act passed before E. G. Gottschalk, notary public at New Orleans, the eighth day of October, eighteen hundred and sixty-one,
63 for the reimbursement whereof he has made and subscribed a certain promissory note dated said day, to the order of and indorsed by himself for said sum of three thousand five hundred dollars, payable in one year, and stipulating to bear interest at the rate of eight per cent. per annum from maturity until paid. That in order to secure the payment of said note, interest, attorney's fees, and costs, the said Leonce Burthe did specially mortgage and hypothecate, in favor of the said company, the three undivided twenty-fifths of a certain portion of ground situated in the suburb Delord, designated by the number one, on a plan made by Allon d'Hemecourt, surveyor of this city, dated the twenty-third of April, 1859, annexed for reference to an act of inventory and appraisement passed before Selim Maguer, notary public, on the twenty-fifth day of April, 1859, which portion of ground measures one hundred and six feet eleven inches five lines front on New Levee street, one hundred and twenty-nine feet five inches front on Delord street, one hundred and twenty feet three inches two lines front on Fulton street, eighty-one feet three inches five lines front on South street, and forty-five feet
64 six inches four lines on the division line of the suburbs St. Mary and Delord.

Together with the three undivided twenty-fifths of the two-story brick warehouse thereon, known as the Fulton warehouse, as will

more fully appear by copy of said act, and by said note, which are annexed to and made a part of this petition.

That the payment of said note has been amicably demanded.

On consideration of the premises, your petitioner prays for executory process, and that the said property hypothecated be seized and sold, and that out of the proceeds he be paid cash the aforesaid sum of three thousand five hundred dollars, amount of said note, payable the 8th October, 1862, with interest at eight per cent. per annum from this date until final payment, attorney's fees at five per cent., and all costs.

And prays for general relief.

(Signed) A. CHIAPPELLA,
Pres't Union Insurance Company.

Order: Let executory process issue in this case as within prayed for and according to law.

(Signed) R. K. HOWELL, *Judge*

65 *Writ of seizure and sale.*

STATE OF LOUISIANA, *Sixth district court of New Orleans:*

UNION INSURANCE COMPANY
vs.
LEONCE BURTHE. } No. 16,960.

The State of Louisiana to the parish of Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the sixth district court of New Orleans, to seize, and after all legal formalties sell, the following described property, to wit: The three undivided twenty-fifths of a certain portion of ground situated in the suburb Delord, designated by the number one on a plan made by Allon d'Hemecourt. surveyor of this city, dated the 23d April, 1859, annexed for reference to an act of inventory and appraisement passed before Selim Maguer, notary public, on the 20th day of April, 1859, which portion of ground measures 106 feet 11 inches 5 lines front on New Levee street, 81 feet 3 inches 5 lines front
66 on South street, and 45 feet 6 inches 4 lines on the division line of the suburbs St. Mary and Delord, together with the three undivided twenty-fifths of the two-story brick warehouse, known as the "Fulton warehouse," to pay pl'ff's claim of three thousand five hundred dollars, amount of note payable 8th of October, 1862, with interest at eight per cent. per annum from this date until final payment, attorney's fees, fixed at five per cent., and all costs.

And what you do in the premises you make return thereof, together with this writ, to our said court as the law directs.

Witness the honorable R. K. Howell, judge of our said court, the 15th day of January, in the year of our Lord one thousand eight hundred and sixty-four, and in the 88th year of the independence of the United States.

(Signed) JNO. M. COONEY, *D'y Clerk.*

A true copy.

(Signed) E. H. LEHMAN, *D'y Clerk.*

67 *Document "D."—Offered by Union Insurance Company.—Filed June 15th, 1865.*

Whereas I, James C. Dunham, sheriff of the parish of Orleans, by virtue of a writ of seizure and sale to me directed by the honorable the sixth district court of New Orleans at the suit of Union Insurance Company *versus* Leonce Burthe, No. 10,960 of the docket of said court, after having fulfilled and complied with all the legal previous requisites, did seize the three undivided twenty-fifths of a certain portion of ground situated in the suburb Delord, designated by the No. one on a plan made by Allon d'Hemecourt, surveyor of this city, dated the 23d April, 1859, annexed for reference to an act of inventory and appraisement passed before Selim Maguer, notary public, on the 25th of April, 1839, which portion of ground measures one hundred and six feet eleven inches and five lines front on New Levee street, one hundred and twenty-nine feet three inches and two lines front on Fulton street, eighty-one feet three inches and five lines front on South Market street, and forty-five feet six inches
68 and four lines on the division line of the suburbs St. Mary and Delord, together with the three undivided twenty-fifths of the two-story brick warehouse, known as the "Fulton warehouse."

And after having given due and legal notice to the said defendant of the said seizure, in the manner pointed by law, I advertised the said before-described property for sale, after the expiration of the legal delay from the time of said notice, to wit:

On the twenty-fifth day of January, 1864, by advertisements composed in English and French, announcing the sale to take place at the Merchants' and Auctioneers' Exchange, Royal street, between Canal and Custom-house streets, on the twenty-sixth day of February, 1864, at twelve o'clock m. Said advertisements were inserted and published in English and French in one paper in the city of New Orleans, to wit, in the New Orleans Bee, from the said twenty-fifth day of January, 1864, to the day of sale, being full thirty days from the date of the first notice given in said newspapers. Said advertisements were inserted and published in said newspaper on the 25th day of January, and the 2d, 9th, 18th, 26th days of February,
69 1864, and having further complied with and performed all the additional previous legal requisites; and after the said before-described property having been duly appraised, did expose the same at public auction according to law at the said Merchants' and Auctioneers' Exchange, Royal street, between Canal and Custom-house streets, on the said twenty-sixth day of February, eighteen hundred and sixty-four, at 12 o'clock m.; and at the same time and place of sale I did read, *verbatim*, and in a loud and audible voice, the certificate of the recorder of mortgages for the parish of Orleans and city of New Orleans, delivered on the day of sale, and by which certificate it appears there are no other mortgages standing in the name of Leonce Burthe, and recorded against the said above-described property than—

1st. B. 77, f'o 409. The one he granted in favor of the Union In-

surance Company, to secure payment of $3,550, interest and costs, as per act before E. G. Gottschalk, notary, dated 8th and recorded the 11th of October, 1861.

2d. B. P. 1, f'o 370. The privilege in favor of the board of commissioners of the second draining district to secure payment
70 of all costs of drainage thereon—

When Achille Chiappella, president of the Union Insurance Company, being the highest and last bidder, for account of the said Union Insurance Company, the said before-described property was adjudicated to the said Achille Chiappella for account of the said Union Insurance Company, for the price and sum of fourteen hundred dollars, payable cash; but the purchasers being the plaintiffs in the above-entitled case, and holders of the mortgage under which this sale was made, (being the first in rank,) retained in their hands the amount of the price of adjudication, on account of their claim and said mortgage, after paying all the costs and charges on sale; and the said purchasers bind themselves to pay all the taxes due on the said property, as well as the State and city taxes for the ear 1863:

Now, therefore, know all men by these presents, that I, the said sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such case made and provided, do sell and tranfer the said before-described property to the said Union Insurance Company, and all the right and title which the said defendant had in or to the said before-described property, to have and
71 to hold the same, to the said Union Insurance Company, their heirs and assigns forever.

In witness whereof, I have hereunto signed by name, at New Orleans, in the State of Louisiana, this twenty-sixth day of February, in the year one thousand eight hundred and sixty-four.

(Signed) JAS. E. DUNHAM,
Sheriff of the Parish of Orleans.

Signed in the presence of—
CHAR'S AGAISSE.
MICH'L DE ARMAS.

I, register of conveyances, certify that the foregoing deed was this day recorded in my office, in book No. 87, f'o 652.

New Orleans, 12th March, 1864.

(Signed) F. McCULLOCK, *Register.*

I certify that the foregoing deed of sale was this day recorded in the clerk's office of the sixth district court, in deed book No. 3, folio 36.

New Orleans, March 14th, 1864.

(Signed) E. H. LEHMANN, *D'y Clerk.*

72 *Document "E."—Offered by Union Insurance Company.—Filed June 15th, 1865.*

UNION INSURANCE COMPANY
vs.
LEONCE BURTHE. } No. 11,177.

STATE OF LOUISIANA,
Sixth district court of New Orleans, parish of Orleans:

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

To command you that by seizure and sale of the property, real and personal, rights and credits of the defendant, Leonce Burthe, in the manner prescribed by law, you cause to be made the sum of two thousand seven hundred thirty seven $\frac{74}{100}$ dollars, with eight per cent. interest from the 26th of February last; and also the sum of ten dollars and fifty-five cents costs, as well as your own costs and charges, to satisfy a judgment rendered against the said defendant in our sixth district court of New Orleans, on the fifth day of April, 1864, in favor of plaintiff; and how you shall have executed this writ, you
73 make return to our said court, in seventy days, according to law.

Witness the honorable G. Duplantier, judge of the said court, this ninth day of April, in the year of our Lord 1864.

[SEAL.] (Signed) E. W. LEHMANN, *D'y Clerk.*

A true copy.
(Signed) A. H. DU BUISSON, *D'y Clerk.*

Sheriff's return.

Received April, 1864; and levied this writ on the property described in the within-annexed notice of seizure, which is made a part of this return, and notified personally the defendant herein of the seizure, when, previous to advertising, the further execution of this writ was stayed by military authority. And the delay within which this writ is made returnable having expired, I make this return, and at the time of the returning of said writ, requested the clerk of this honorable court to furnish me with a copy thereof, together with all my proceedings thereon, in conformity to law:
74 no other property being found after due demand made of both parties.

Returned June 18th, 1864.
(Signed) MICHEL DE ARMAS, *D'y Sheriff.*
Sheriff's fees for this writ $1 50.

In the sixth district court of New Orleans, sheriff's office, parish of Orleans.

NEW ORLEANS, *April 11th*, 1864.

UNION INSURANCE C'Y
vs.
LEONCE BURTHE. } No. 11,177.

To Leonce Burthe:

Take notice that I have seized, and in three days from the service hereof shall proceed to advertise and sell, according to law, the

twenty-two undivided twenty-fifths of the property described in the printed extra herein; the undivided twenty-second of a certain portion of ground situated in the suburb Delord, designated by the No. one on a plan made by Allon d'Hemecourt, surveyor of this city, dated the 23d April, 1859, annexed for reference to an act of inventory and appraisement passed before Selim Maguer, notary
75 public, on the 25th April, 1859, which portion of ground measures one hundred and six feet eleven inches five lines front on New Levee street, one hundred and twenty-nine feet five inches front on Delord street, one hundred and twenty feet three inches two lines front on South street, and forty-five feet six inches four lines on the division line of the suburbs St. Mary and Delord, together with the three undivided twenty-fifths of the two-story brick warehouse known as the Fulton warehouse; seized in the above suit.

Terms cash on the spot in U. S. treasury notes.

JAMES E. DUNHAM,
Sheriff of the Parish of Orleans.

To pay and satisfy the writ issued in this case, say the sum of 2,737 24, with interest and costs, unless the same is immediately paid.

(Signed) MICHEL DE ARMAS, *D'y Sheriff.*

On the 11th day of April, 1864, served copy of the within notice of seizure personally on the defendant herein.

(Signed) MICHEL DE ARMAS, *Deputy Sheriff.*

76 *Document F.—Offered by Union Insurance Company.—Filed June 15th*, 1865.

HEADQUARTERS PROVOST MARSHAL GENERAL,
DEPARTMENT OF THE GULF,
208 *Carondelet street, New Orleans, April 11th*, 1864.

Alfred Shaw, esq., sheriff parish of Orleans:

You will be pleased to refrain from selling or advertising to be sold the property of Eugene La Sue, Leonce Burthe, and A. Kendall Carter, the same having been seized by the United States military authorities.

Very respectfully,

JAMES BOWEN,
Br. G'l, Provost Marshal General Dep't of the Gulf.

A true copy from the original on file in my office.
New Orleans, May 6th, 1865.

(Signed) ALFRED SHAW, *Sheriff,*
P'r MICH'L DE ARMAS, *D'y Sheriff.*

77 *Document G.—Offered by Union Insurance company.—Filed June 15th*, 1865.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records

in this office there are no other mortgages standing in the name of Leonce Burthe, and recorded against a certain portion of ground situated in the suburb Delord, (first district,) designated by the No. one on a plan of A. d'Hemecourt, on the 23d April, 1859, and has 106, 11, 5 front on New Levee st., 129, 5 front on Delord st., 120, 3, 2 front on Fulton st., 81, 3, 5 front on South street, and 45, 6, 4 on the division line of the suburbs St. Mary and Delord, together with the buildings, than the following, to wit:

1o. B. P. 1, f'o 370. The privilege in favor of the second draining district.

2o. B. I. 11, f'o 276. The general one in favor of the Union Insurance Company, as per judgment of the 6th district court on the 5th April, 1864, for $2,737 74, and interest and costs.

3o. B. I., f'o 277. The general one in favor of Abat and
78 Generes, as per judgment of the 6th district court on the 5th April, 1864, for $4,127 46, interest and costs.

4o. B. I. 11, f'o 340. The general one in favor of Crafts J. Wright, as per judgment of the circuit court of the United States, 6th circuit and eastern district of L'a, on the 25th April, 1864, for $8,247 07, interest and costs.

New Orleans, March 27th, 1865.

(Signed) J. W. MADDEN, *Recorder.*

Document H.—Offered by Union Insurance Company.—Filed June 15th, 1865.

STATE OF LOUISIANA, *Sixth district court of New Orleans:*

I hereby certify that on the 5th day of April, 1864, judgment was entered in this court in the suit of "Union Insurance Company" *versus* Leonce Burthe, No. 11,177, in the words and figures following, to wit:

In this case the court considering the answer and confession of judgment of the defendant on file—

79 It is ordered that judgment be accordingly entered in favor of the plaintiff, the Union Insurance Company, of New Orleans, and against the defendant, Leonce Burthe, for the sum of two thousand seven hundred and thirty-seven $\frac{74}{100}$ dollars, with eight per cent. interest from the twenty-sixth day of February last until paid, and costs of suit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, in the city of New Orleans, on this 15th day of May, in the year of our Lord one thousand eight hundred and sixty-five, and in the eighty-ninth year of the independence of the United States.

(Signed) A. H. DU BUISSON, *D'y Clerk.*

Document 1 and K, offered by Crafts J. Wright, and filed June 15th, 1864.

Circuit court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, as you have heretofore been, that you demand from Leonce Burthe the sum of eight thousand two hundred and forty-seven dollars and seven cents, with interest thereon at the rate of five per cent. per annum from the first day of June, 1860, till paid, and costs of suit, and that the same shall be in full payment of all claims and demands of Crafts J. Wright, plaintiff, against said Leonce Burthe, defendant, up to the 25th day of April, 1864, and shall be a full and final settlement of the partnership existing between them, a settlement whereof is, on plaintiff's petition, asked for, and that the payment of said sum shall be a full and complete discharge thereof.

Clerk's costs, $22 50, cash, which Crafts J. Wright lately recovered by judgment of the circuit court of the United States for the sixth circuit and eastern district of Louisiana; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Leonce Burthe, in your district, if
81 sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the sum to be made out of the real estate of the said Leonce Burthe, in your district, whereof he was owner on the 25th day of April, 1864, in whose hands soever the same may have come; and that you have those moneys before our said court to render to the said Crafts J. Wright, for the judgment aforesaid, on the seventieth day from the date hereof, together with writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this ninth day of January, A. D. 1865, and 89th year of the independence of the United States of America.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received 19th January, 1865; and on the 4th day of March, 1865, I seized, at the request of the plaintiff herein, the property set forth in the certificate of mortgages hereto annexed, and notified the said defendant according to tenor of said seizure, and advertised the
82 said property for sale according to law in the True Delta, which sale is to take place in the Merchants' and Auctioneers' Exchange, on the 13th of April, 1865, at 12 o'clock m.; and the delay awarded by law for the return of the said writ having expired this day, I hereby keep a certified copy of this writ, as the law provides, for the purpose of making my final return of said seizure.

Returned 20th March, 1865.

(Signed) A. BOISBLANC, *Deputy U. S. Marshal.*

Office of Mortgages.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records in this office there are no other mortgages standing in the name of Leonce Burthe, and recorded against lot (or sq'r) having 106 feet 11 inches 5 lines front on New Levee street, 129 feet 5 inches front on Delord street, 120 feet 3 inches 2 lines front on Fulton street, 81 feet 3 inches 5 lines front on South Market, and 45 feet 6 inches 4 lines on the division line of the suburbs St. Mary and Delord, known as the Fulton warehouse—

83 Than B. P. 1, f'o 370. The privilege in favor of the 2d draining district to secure all costs of drainage thereon.

2o. B. I. 11, f'o 276. The general one in favor of the Union Insurance Company of New Orleans, resulting from a judgment rendered by the 6th district court of New Orleans, the 5th April, 1864, for the sum of $2,737\frac{74}{100}$, interests and costs, No. 11,177, against Leonce Burthe, and recorded the 9th April, 1864.

3o. B. I. 11, f'o 277. The general one in favor of Abat and Generes, resulting from a judgment rendered by the sixth district court, the 5th April, 1864, for the sum of $4,127\frac{46}{100}$, interests and costs, No. 11,277, against Leonce Burthe, and recorded 9th April, 1864.

New Orleans, August the 25th, 1864.

(Signed) J. W. MADDEN, *Recorder*.

And he further certifies that the following was recorded under date of this day, viz:

B. I. 11, f'o 340. The general one in favor of Crafts J. Wri gh and against said Burthe, resulting from a judgment of the circuit court of the U. S. for the 6th circuit and eastern district of Louisiana, anti sitting in this city, on the 25th day of April, 1864, for $8,247\frac{07}{100}$,

84 interest and costs, as per judgment.

New Orleans, August 25th, 1865.

(Signed) J. W. MADDEN, *Recorder*.

On behalf of the plaintiff in the case of Crafts J. Wright *vs.* Leonce Burthe, we hereby point out the within-mentioned property to be seized by the marshal on *fi. fa.* issued on said suit, he to examine as to further incumbrance than those within mentioned.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Per A. B. LONG.

New Orleans, Mar. 3, 1865.

Document L, offered by P. L. Burthe et al., and filed June 15th, 1865.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this sixth day of June, one thousand eight hundred and fifty-nine, before me, Selim Maguer, a notary

85 public in and for the parish of Orleans, duly commissioned and sworn, personally came and appeared—

1o. Dominique Francois Victor Burthe, of the parish of Jefferson, in

this State, herein acting as well in his own name and behalf as in his quality of attorney in fact of Pierre Leopold Burthe, and Mistress Marguerite Felicie Burthe, wife of Louis Frederic Foucher, both of Paris, duly appointed by act of procuration passed before A. E. M. Delagrevol and his colleague, notaries public in Paris, on the twentieth of January, eighteen hundred and fifty-three, deposited in the office of A. Chiappella, late a notary public in this city, per act dated the twenty-third of February, eighteen hundred and fifty-three.

2o. Henry Clement Millaudon, of the parish of Jefferson, in this State, herein acting in his quality of dative tutor of the minor Dominique Francois Edmund Burthe, son of the late Edmund Burthe, and Mrs. Elodie Millaudon, deceased.

3o. Louis Florval Generes, of this city, herein acting as the attorney in fact of, 1o., Mistress Justine Theodorine Abat, widow of late Joseph Antoine Henry Burthe and now the wife of Francois Eugene
86 Garreau, of Paris, France, the natural tutrix of her two minor children, Francois Joseph Paul Louis Burthe and Dominique Francois Burthe, duly appointed by act of procuration passed before Auguste Henry Chatelin, notary in Paris, on the thirteenth day of April, eighteen hundred and fifty-nine, deposited in the office of Edward G. Gottschalk, notary public in this city, by act dated the nineteenth of May, eighteen hundred and fifty-nine; 2o, Mistress Marguerite Suzanne Delord Sarpy, widow of the late Andre Burthe d'Amelet, duly appointed by act of procuration passed before Eugene Louis Bazin and his colleague, notaries in Paris, on the twelfth of December, eighteen hundred and fifty-six, deposited in the office of the undersigned notary, by an act dated the fourteenth of January, eighteen hundred and fifty-seven; which appearers declared that for the consideration hereinafter set forth, and in pursuance of the public adjudication made by Norbert Vigine, an auctioneer in this city, on the thirteenth of May last, by virtue of and in obedience to a judgment rendered by the sixth district court of New Orleans, in the case of L. Burthe and als. *versus* C. Millaudon, dative tutor, and als., No. 7,166, for a partition, as the same will fully appear by reference to
87 the annexed proces verbal of said auctioneer, they do by these presents grant, bargain, and sell, with all legal warranties, and with subrogation to all their rights and actions in warranty, and those of their respective constituents, against all preceding vendors or possessors, unto Leonce Burthe, of this city, here present acknowledging possession, and accepting for himself, his heirs and assigns, the eleven undivided twelfths of twelve certain lots or portions of ground situated on the lower part of the batture of suburb Delord in this city, numbered from one to twelve inclusive, according to a plan of Allon d'Hemecourt, surveyor, dated the twenty-third of April, eighteen hundred and fifty-nine, annexed for reference to an act of inventory and appraisement thereof, passed before me, notary, on the twenty-fifth of April of same year 1859, according to which plan said lots or portions measure as follows, to wit: Lot No. one measures one hundred and six feet eleven inches five lines front on New Levee street, one hundred and twenty-nine feet five inches front on Delord

street, one hundred and twenty feet three inches two lines front on Fulton street, eighty-one feet three inches five lines front on South street, and forty-five feet six inches four lines on the
88 division line between suburbs St. Mary and Delord, together with the two-story brick warehouse thereon, known as the Fulton warehouse.

Lot No. two, being a whole square, measures one hundred and twenty feet five inches five lines front on Front street, one hundred and twenty feet three inches two lines front on Fulton street, one hundred and twenty-nine feet five inches front on Delord street, and one hundred and twenty-eight feet eight inches two lines front on South Market street.

Lot No. three, being an entire square, measures one hundred and twenty feet five inches five lines on each of Delta and Front streets, and one hundred and twenty-four feet eleven inches two lines on each of Delord and South Market streets.

Lot No. four, being an entire square, measuring one hundred and twenty feet five inches five lines on each of Water and Delta streets, and one hundred and twenty-four feet eleven inches and two lines on each of Delord and South Market streets.

Lot no five, in square bounded by Front, Fulton, South Market and North Market streets, is of a triangular form, and measures forty-two feet three inches two lines on Front street, six feet eight inches three lines on Fulton street, one hundred and twenty-eight feet five
89 inches seven lines on South Market street, and one hundred and twenty-three feet two inches two lines on the division line of the suburbs St. Mary and Delord.

Lot No. six, comprised within Front, South Market, Water and St. Joseph streets, measures fifty-nine feet seven inches three lines front on Front street, three hundred and twelve feet six inches three lines front on South Market street, one hundred and forty-six feet four inches two lines front on Water street, and three hundred feet on the division line between suburbs St. Mary and Delord.

Lots number seven, eight, nine, ten, eleven and twelve, comprised between Calliope and Water streets, the division line between suburb St. Mary and Delord, and the river Mississippi, are sold, together with the rights of future accretion in front of said lots, and measure each sixty-five feet four inches front on Water street, and closing towards the river so as to have, at the distance of about one hundred and twenty feet from Water street, a width of sixty-three feet two inches and four lines; said lots No. 6 to 12 inclusive, being still in possession of the city of New Orleans, as being necessary for public use, and for which reason the naked ownership to the same is
90 hereby only sold, together with the rights, ways, servitudes, privileges, and advantages belonging to all said above-described lots of ground and appurtenances thereof.

The said Leonce Burthe is already owner of the one undivided twelfth of said property, he having, together with the present vendors, been recognized as owners thereof by a judgment of the honorable the sixth district court of New Orleans, in the case of the Heirs of

Delord Sarpy *vs.* City of New Orleans *et als.*, No. 4,618 of the docket of said court, which judgment was confirmed by the supreme court of this State of Louisiana on the eighteenth of April, eighteen hundred and fifty-nine—

To have and to hold the said eleven undivided twelfths of said property unto the said purchaser, his heirs and assigns, to their only proper use and behoof forever.

The said vendors declared that there are no taxes due on said property, the same having been in possession of the city of New Orleans until the date of the adjudication made to said purchaser.

By reference to the annexed certificate of the recorder of mortgages in and for this city and parish, it appears that said
91 property is free from incumbrance in the name of said vendors,

This sale is made for and in consideration of the price and sum of seventy-one thousand nine hundred dollars, being

For lot No. one, twenty thousand dollars	$20,000
For lot No. two, seven thousand three hundred dollars	7,300
For lot No. three, six thousand dollars	6,000
For lot No. four, seventy-five hundred dollars	7,500
For lot No. five, eleven hundred dollars	1,100
For lot No. six, six thousand dollars	6,000
For lots No. seven to twelve inclusive, twenty-four thousand dollars	24,000
Total	$71,900

which amount the said vendors acknowledged to have received a follows, to wit:

The said Leonce Burthe, being owner of one-twelfth of said property, has retained in his hands the sum of fifty-nine hundred and ninety-one dollars and sixty-six and two-thirds cents, and the balance of said adjudication, amounting to sixty-five thousand nine hundred and eight dollars thirty-three and one-third cents, he has paid in ready money to said Dominique Francois Victor Burthe, Henry Clement Millaudon, and Louis Florval Generes, the receipt whereof they hereby acknowledge in their respective qualities, and grant acquittance there-
92 for.

Done and passed in my office, at New Orleans aforesaid, on the day, month and year first before written, in the presence of Edward G. Gottschalk and Forester Brugier, competent witnesses, who sign these presents with the said appearers and me, notary, after reading thereof.

(Signed) L. BURTHE.
VICTOR BURTHE.
C. MILLAUDON.
L. F. GENERES.
E. G. GOTTSCHALK.
F. BRUGIER.
S. MAGUER, *Notary Public.*

A true copy.
New Orleans, 1st April, 1865.
[SEAL.] (Signed) S. MAGUER, *Notary Public.*

Document M.—Offered by L. Burthe and al.—Filed June 15th, 1835.

Par devant moi Auguste Henri Chatelain, notaire a Paris, soussigne et en presencs des temoine ci-apres nommes et soussigne,
93 furent presents Mme. Justine Theodorine Abat, veuve en premieres noces de feu Joseph Antoine Henry Burthe, decede a Paris le treize Avril, mil huit cent cinquante cinq, et maintenant epouse de M. Francois Eugene Garreau, assi present proprietaire, demeurant ensemble au chateau de Breau, department de Seine et Marne (France). La dite dame agissant en sa qualite de tutrice de ses deux enfants mineurs issus de son marriage avec le dit Sieur Burthe, decede, savoir.

1°. Francois Joseph Paul Louis Burthe, ne a la Nouvelle Orleans, le neuf Novembre, mil huit cent quarante huit.

2°. Dominique Francois Burthe, ne a Paris, le 30 Novembre, mil huit cent cinquante un. La dite dame ayant ete maintenue dans la tutelle selon la deliberation du conseil de famille de ses dits deux enfants, tenue a la justice de paix du premier arrondissement de Paris, le neuf Juin, mil huit cent cinquante huit. Et le dit Sieur Francois Eugene Garreau agissant aux presentes tant pour assister et authoriser la dite dame son epouse qu'en sa qualite de co-hiteur avec la dite dame nomme par le conseil de famille sus recite.

94 Lesquels ont par ses presentes, fait et constitue pour leur mandataire general et special aux effets ci-apres M. Louis Florval Generes, demeurant a la Nouvelle Orleans, Etat. de la Lousiane, Etats Unis d'Amerique, et a son defaut en cas de mort, absence ou incapacite d'agir, Charles George Edouard Baquie demeurant aussi a la Nouvelle Orleans.

Auquel ils donnent pouvoir de four euse et eu leurs dites qualites regir, gerer, gouverner, et administrer activement et passivement tous les biens droits affaires presentes et a venir des dits enfants et ci dans tous les Etats Unis d'Amerique et particulierement dans l'Etat de la Louisiane, en consequence louer et affermer a telles personnes pour le temps et au prix charges clauses et conditions que le mandataire jugera convenables tout ou partie des biens meubles et immeubles qui appartiennent ou appartiendront par la suite aux dits enfants de la dite Dame Garreau, passers proroger, renouveler, et accepter tous beaux, les resilier avec ou sans indemnite, fair les dits beaux verbalement par actes sous signatures proces ou devant notaires, faire toutes constructions et reparations, faire tous devis et contracts, regler tous comptes avec les entreprenes, faire inspecter et surveiller les travaux, les accepter ou refuser, mettre tous entrepreneurs en demeure
95 les poursuive, obtenir jugements, payer et acquitter toutes impositions et contributions de tout nature, faire toutes reclamations, signer a cet effect tous memoires et petitions. Toucher et recevoir tous loyers, fennages, interests de capitaux et autres revenues echus, et a echoir meme tous remboursements offerts ou exigibles, et generalement toutes sommes qui sont ou pourront etre dues aux dits enfants de la dite Dame Garreau, a quelque titre et pour quelque cause que ce soit, regler avec les banques et autres corps incorpores

pour toutes actions dont les dits enfants de la dite dame constituant, sont ou pourraient devenir proprietaires, vendre les dites actions ou en acheter de nouvelles, recevoir tous dividendes, en donner quittances comparaitre a toutes assemblees des actionaires, nommer tous directeurs, prendre part a toutes deliberations, faire tous protets et oppositions, consentir toutes hypotheques pour les dites actions ou en obtenir main levee et faire les radiations. Faire tous placements de fonds pour le compte de dits enfants de la dite dame constituante, acheter tous billets qu'il avisera sans neanmions qu'il en soit responsable, recevoir toutes hypotheques pour assurer le paiement des dits billets, en donner main levee, fixer le taux des interests, prendre toutes
96 les mesures en pareil cas requises, acheter tous esclaves et toutes proprietes foncieres que le mandataire avisera aux taux et conditions qu'il jugera convenables fournir le montant des dites ventes, soit a termes soit au comptant, se faire remettre toutes copies titres et pieces relatifs, signer et endosser au nom des dits enfants de la dite Dame Garreau tous billets.

Vendre tout ou partie des biens meubles et immeubles qui appartiennent et appartiendront par la suite aux dits enfants de la dite dame egalement dans les formes a tels prix et conditions que le mandataire auisera obliger les d'enfants de la dite dame constituante a toutes les garanties recevoir le prix des rentes, remettre tous titres de propriete, requerir toutes transcriptions d'office, en donner main levee, et consentir a la radiation.

Recueillir les successions echues ou qui pourraient echoir a l'avenir aux dits enfants de la dite dame constituante, recueillir egalement tous legs faits aux dits enfants, accepter toutes donations et autres actes de liberalite fait au profit des dits enfants, requerir toutes appositions de scelles ou s'y opposer, faire proceder a tous inventaires, nommer tous officiers, faire pendant le cour de ses operations tous dites requisitiones, declarations, protestations, et
97 reserves, prendre connaissance des forces et charges des d. successions et legs, les accepter purement et simplement ou sous benefice d'inventaire, ou y renoncer, faire a tous greffes qu'il appartiendra toutes declarations et affirmations necessaires faire proceder, s'il y a lieu, a la vente du mobilier, entendre le compte de l'officier qui aura procede a cette vente et les comtes des officiers qui auront administre les dites successions, prendre connaissance de tous testaments et codicilles, en consentir ou contester l'execution, faire et consentir ou accepter la delivrance de tous legs. Faire toutes declarations, acquitter tous droits de mutation auxquelles les dites successions et legs pourront donner ouverture. Proceder a toutes liquidations et partages de biens et droits indivis de succession et communaute interessant les dits enfants mineurs; faire les dits partages a l'amiable ou en justice, nommer tous experts pour les evaluations, faire exiger tous rapports, composer les masses, former les lots, les tirer au sort ou les distribuer a l'amiable, laisser tous objets en commun, donner et accepter tous pouvoirs pour les administrer ou pour en suivre le recouvrement.

Agir dans toutes les faillites dans lesquelles les dits enfants mineur

auraient des interests a discuter, assister a toutes assemblees
98 de creanciers, prendre part a toutes deliberations, signer tous atermoiements et concordats, nommer tous syndics provisoires et definitifs, produire tous titres et pieces, assister a la verification des creances, faire admettre celle des dits enfants mineurs, affirmer la sincerite de dites creances, prendre part a toutes distributions de deniers; accepter toutes cessions et abandons de biens meubles et immeubles.

De toutes sommes recues ou payees, donner ou retirer quittances bonnes et valables, de tous titres et pieces retires ou reunis, donner ou se faire donner toutes decharges, consentir ou stipuler toutes mentions, subrogations et compensations.

En cas de difficultes ou contestations comparaitre devant toutes cours generalement quelconques, nommer tous avocats ou agents, obtenir tous jugements, les faire mettre a execution par tous moyens de droit et meme compromettre et transiger, et a cet effect nommer tous arbitres et surarbitres experts et tiers experts, se soumettre a toutes sentences arbitraires, comme a chose jugee en dernier ressort.

Aux fins ci-dessus passer et signer tous actes que besoin sera, et generalement faire relativement a ceque dessus, tout ceque les circonstances pourront exiger, quoique non specialement prevu par les presentes, promettant les dits com-
99 parants, en leur qualite sus recitee, le confirmer et ratifier si besoin est, aussi avec pouvoir de substitution et revocation en faveur du dit Sieur Louis Florval Generes seulement.

Dont acte sur modele presente est rendu. Fait et passe a Paris, en la residence de M. et Mme. Garreau, rue de l'Arcade, No. 23 l'an mil huit cent cinquante neuf le treize du mois d'Avril, en presence de, 1°, Monsieur Louis Francois Blot, negociant demeurant a Paris, rue des Enfants Rouges, No. 8; 2°, et M. Jacques Armand Barbay, ancien principal clerc de notaire, demeurant a Paris, rue de Rivoli, No. 150; tous deux majeurs francais, temoins instrumentaires ici appelles a defaut d'un second notaire.

Et M. et M'me Gareau out signé avec les temoins et le notaire, apres lecture faite signé sur la minute—J. J. Abat, Eugene Gareau, Blot, A. Barbay, et Chatelain.

Ensuite est ecrit: enregistre a Paris, huitieme bureau, le quinze Avril, mil huit cent cinquante neuf fo 78, verso case 6. Recu deux francs et vingt centimes pour decime. Signe: Maillet, Signe Chatelain.

Vu pour legalisation de sa signature de M. Chatelain notaire a Paris,
par nous juge au tribunal civil de la Seine, par empechement
100 de M. le president.

Paris, le quinze Avril, 1859.

(Signe) L. DE PONTON D'AMECOURT.

Vu pour legalisation de la signature de M. de Ponton d'Amecourt appose ci dessus.

PARIS, *le* 16 *d'Avril*, 1859.

Par delegation du garde des sceaux, ministre de la justice.

Le Chef du Bureau,

(Signe) CH. MAUSAT BAROCHE.

Le ministre des affaires etrangeres certifie veritable la signature de M. Mausat Baroche.

PARIS, *le* 16 *Avril*, 1859.

Pour le sous directeur, chef de la chancellerie.
(Signe) DUBOIS.

CONSULATE OF THE UNITED STATES OF AMERICA,
Paris, France.

The signature on the following page of M. Dubois, of the foreign office, duly legalized at this consulate.
Paris, the 21st April, 1859.
(Signed) HENRY W. SPENCER,
United States Consul.

Je, Edward G. Gottschalk, notaire public dans et pour la paroisse d'Orleans, certifie que ce qui precede est la copie fidele et
101 exacte d'un document authentique, annexe a un acte de depot par devant moi, en date du 19 May, 1859.
Nouvelle Orleans, le 11 Avril, 1858.
[SEAL.] (Signed) E. G. GOTTSCHALK, *Not. Pub.*

(The decree of supreme court in the case of Heirs Delord *vs.* City of New Orleans, has not been furnished to be filed.)

(The above decree is herein transcribed, at page 106.)

Hearing and continuance, from the minutes of June 15*th*, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542

This cause was called for trial. District attorney for libellants. Durant & Hornor for Union Insurance Company for intervenors. Le Castera for P. L. Burthe et al., intervenors. Sullivan, Billings & Hughes for Crafts J. Wright, intervenors.
102 When, on motion of the district attorney, ordered that the libel be amended by striking out the words "in the square." And after hearing pleadings, evidence, and argument in part, the cause is continued until to-morrow at 11 a. m.

Order, cause fixed for trial, from the minutes of July 8*th*, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

On motion of the district attorney, it is ordered that this cause be assigned for trial for Thursday, the 13th instant, at 11 o'clock a. m., and that the parties interested therein be notified thereof.

Notices of trial issued July 8th, 1865.

103 Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

You are hereby notified that this case is assigned for trial for Thursday, the 13th day of July, A. D. 1865, at 11 o'clock a. m.
By order of court.
Witness my hand and and seal of the said court, at New Orleans, this 8th day of July, A. D. 1865.
(Signed) F. B. VINOT, *Dep. Clerk.*

To Messrs. DURANT & HORNOR, Messrs. SULLIVAN, BILLINGS & HUGHES, Mr. L. CASTERA.

Marshal's return.

104 Received July 10th, 1865; and on the same day, month, and year served a copy of the within notice on Sullivan, Billings & Hughes, in the hands of J. P. Sullivan personally, he being one of said firm; a copy in the hands of F. J. Durant and Hornor, esqrs., and on the 11th a copy also on L. Castera, esq., personally.
July 11th, 1865.
(Signed) J. J. PREIS, *D'y U. S. Marshal.*

Note of evidence, filed July 13th, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

P. L. Burthe *et al.*, intervenors, offered documents 9 and R.
Leave granted to the proctor for intervenors to file a brief within 2 days.

(Here follows plat, page 105.)

106 *Document R, offered in evidence July 13th, 1865.*

NOVEMBER 10th, 1856.

HEIRS OF DELORD, appellees,
vs.
CITY OF NEW ORLEANS, appellants. } No. 4601.

Appeal from the sixth district of New Orleans.

Mr. Justice Spofford absent.
Mr. Justice Buchanan: The plaintiffs, Heirs of M'me Delord Sarpy, claim in right of ancestors a portion of the alluvion on batture in front of the faubourg Delord, from the defendants, who are in possession of the same. The defence turns upon three points, 1st. That

the division line of the alluvion in front of the faubourgs St. Mary and Delord should be a prolongation of the line of division of those faubourgs, which mode of running the line would exclude the land in contest from the share of the heirs of Delord in said alluvion; 2d. Dedication of the property to public use by the heirs of Delord: 3d. Prescription.

I. The mode of dividing the alluvial deposit on the banks of
107 the rivers of Louisiana between contiguous proprietors, whose titles called for a front on the river, is clearly and concisely prescribed in article 508 of the civil code: "If an alluvion be formed in front of the property of several riparian proprietors, the division is to be made according to the extent of the front line of each at the time of the formation of the alluvion." The judgment of the district court has followed this plain rule of law in awarding the land in contestation to the plaintiffs; a prolongation of the division line of the faubourgs would cross the batture in front of them obliquely up the river, and in course of time would exclude the plaintiffs from the river altogether. This mode of division of the batture is contrary to the spirit as well as the letter of the law. The title by accretion, or right of accession, in relation to lands, is a sort of legislative donation of what would, without such donation, be public property. It is a pure gratuity by the state to the riparian proprietor, for there is no reason whatever in the nature of things why the purchaser or grantee of an arpent of land extending to the river bank should become, without any price paid or consideration passing, the owner of another arpent of land, added to the first arpent by the effect of alluvial
108 deposit. His title to the second arpent is not the conveyance which he holds of the first; but it is the law.

This legal title refers, it is true, to one of the lines of the riparian proprietor's original title, as the measure of his right of accession in the alluvial accretions of soil. But the line so referred to is not the side line of the original conveyance or grant. It is its front line, and the front line alone. The course of the side line is a matter of no consequence, in the division of alluvion formed subsequently to the conveyance or grant. The line of such division must be drawn in such manner as that each of the contiguous riparian proprietors shall have such a proportion of the alluvial soil as the total extent of his front line bears to the total quantity of the alluvial soil to be divided.

There is no case in our reports of any decision upon the construction of article 508 of the code, an indication that the understanding of the community and of the profession has been unanimous upon the subject. There is a case in 17 Louisiana Reports, page 573, somewhat analogous, in which a pretension of the first muni-
109 cipality of the city of New Orleans to prolong one of its wharves so as to interfere with the wharves of the second municipality was rebuked by the supreme court. But that case turned upon the construction of the act of 1836 dividing the city of New Orleans into three municipalities.

II. The answer pleads that plaintiffs are estopped in law, for by

their silence inaction they have assented to the mode in which the batture has been laid off into squares and streets, and to the prolongation of the side lines of the faubourgs across the batture.

In agreement this plea is amplified into one of dedication of the locus in quo by the plaintiffs to the public use. In support of this view of the subject, defendants have given in evidence an act of partition between the heirs of Madame Delord Sarpy, on the 7th of April, 1827, and the plan attached thereto.

The argument is, that inasmuch as the land now claimed does not figure upon the plan, and as the plan and the act profess to represent and to divide all the real estate of Madame Delord's succession in New Orleans, therefore it must be inferred the heirs of
110 Madame Delord have renounced all right of property in the locus in quo, if they ever had any, and have dedicated it to public use, and the learned counsel of the city relies upon the decision of this court in Sarpy *vs.* Municipality No. 2, 9th Annual, 597, in which these same plaintiffs claimed the Fivoli circle; and the same act of partition and plan were in evidence, and were commented upon by the court, as acts of the plaintiffs which, taken in connexion with other acts in evidence established a renunciation of the proprietorship of Fivoli circle by the plaintiffs, and a dedication of the same to public use. The two cases are not analogous. Without going into a review of the points of difference between them, it is sufficient to say that the existence of alluvion susceptible of private ownership, outside of New Levee street, in the faubourg Delord, in 1827, is not proved; and if it were, the omission to figure it on a plan as part of the Delord estate, and to divide it among the Delord heirs, could not be construed into an abandonment of ownership in favor of the public. This would be pushing the doctrine of stoppel to an extent that none of the authorities warrant. In fact the heirs of Delord might
111 very well have supposed, in 1827, that the batture did not belong to them. Two years later the Supreme Court decided the case of Cochran *vs.* Ford, 7 U. S., 622, adversely to a claim of batture by the riparian proprietor within the limits of the city. It is well known that the late Chief Justice Martin, to the end of his career, maintained the right of the city to such batture, and the contrary doctrine was only finally settled, in the face of his dissenting opinion, in the Orleans cotton-press case, in the year 1841. (18th La. Rep.)

III. The plea of prescription set up by the city rests upon the same foundations as that pleaded and overruled in Kennedy *vs.* Municipality No. two, 10 Annual, 54, a decision subsequently twice affirmed in the cases of Remy and of the Heirs of Gaieuiere *vs.* The City, in 11th Annual.

An error has been committed by the district court in the amount of the judgment rendered against the city, upon the call in warranty of its co-defendant, George May. The city is only bound to refund what it received from its vendee, May, yet the latter, who, as he was authorized to do by the terms of his deed, has exercised Holt's right of warranty against the city, can evidently only do so to the
112 same extent that Holt himself might have done.

It is therefore ordered, adjudged, and decreed that the judgment of the court below be reversed, by reducing the amount awarded in warranty from eight thousand dollars to seven thousand three hundred and fifty dollars, and for which sum judgment is hereby rendered in favor of Geo. May (in restitution of cash and notes) against the city of New Orleans; that in other respects the judgment appealed from be affirmed, and that the costs of the court below be paid by all the defendants, and those of appeal by the defendant, May.

A true copy, as taken from the opinion book.

[SEAL.] (Signed) FELIX BRAND,
D'y Clerk Supreme Court of La.

Hearing and submission of cause, from the minutes of July 13, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

113 This cause, postponed from the 15th June last, was this day resumed.

District attorney for libellants, L. Castera, esq., for P. L. Burthe and al., intervenors.

When, after hearing further evidence and argument, the court took time to advise.

Brief for intervenors, the minors Burthe, filed July 15*th*, 1865.

Circuit court of the United States.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

Brief in behalf of intervenors, the minor Edward Burthe and the minors Paul Louis Burthe and Dominique Francois Burthe.

The minor Edmund Burthe, owes a two thirty-sixth interest, and the minors Paul Louis Burthe and Dominique F. Burthe, each,
114 a one thirty-sixth interest, in and to the property libelled in this case.

The question presented on the intervention filed in the behalf of these minors is, Whether the property libelled is to be declared confiscated for the use and benefit of the United States, when the said minors are not within the terms of law?

The ownership of the property is not, nor can it be, denied. It is fully established by a decree of the supreme court, being of record as evidence in this case, which decree was rendered in the suit of the Heirs of Delord Sarpy *vs.* The City of New Orleans. (Vid. 11 An. Rep., 699.)

The United States pretend and will contend that the title to said property is in the name of Leonce Burthe; that said title is in evidence before the court; and that the court cannot go behind the contents of this title.

Such reasoning may at the first blush appear somewhat strong and plausible, but upon the slightest consideration the court will readily perceive that the reasoning referred to has no bearing upon the matters at issue in the present case.

115 The United States have filed no answer to the intervention of said minors; the facts by these alleged *are not denied*, but they are, on the contrary, sustained by the evidence on record.

Furthermore, the title based upon the sale made to Leonce Burthe may import a transfer of the shares of the heirs who were of age, but so far as the minors were concerned, the sale transferred no part of their interest to Leonce Burthe, and why? Because, according to acts 336 and 337 of the civil code of Louisiana, no sale of a minor's property can be made except upon the authorization of a judge of competent jurisdiction, with the consent of a family meeting and after public advertisements during 30 days; and then the adjudication cannot be made for less than the appraised value of the property.

The supreme court of the State of Louisiana, in the case of the State *vs.* The Judge of the Parish of St. John the Baptist, (17 La. Rep., 500,) have decided "any sale (of a minor's property) that may be necessary, must be ordered by the judge of the parish of the minor's domicil, with the advice of a family meeting held there."

116 In the case of Ann C. Short, adm'x, *vs.* R. D. Piety, (3 Rob. Rep., 262 and 263,) the supreme court have also decided that when a sale in which minors are interested is made without any order of court, the sale in such a case is an absolute nullity, and conveys no title whatever to the purchaser; and even when the sale is made in strict accordance with law as to a portion belonging to an estate, it could not have the effect of releasing the mortgage of the minors.

By the act 1142 of the civil code the administrators have the same powers and are subject to the same duties and responsibilities as curators of vacant estates; therefore the administrators who sold the property libelled in this case to L. Burthe were bound to fulfil the formalities required by law.

There is no evidence that any family meeting was held in order to deliberate upon what terms and conditions the sale should be made; there is no evidence that the sale was made by virtue of an order of court; there is no evidence that the property was adjudicated for its appraise value; in a word, there nothing to show that any of the

117 formalities of law were complied with in the sale of intervenor's property.

It may be asserted that the act of sale contains a declaration that the sale was made by virtue of an order of court, after appraisement, and upon compliance with all the formalities and requisites of law. In reply to this anticipated assertion we would remark that the declaration is a bare allegation, made by the parties to the act, and was inserted to conduce to their interest and advantage, and this declaration is unsupported by any evidence; there is nothing in evidence to show that the sale was valid, but, on the other hand, there is abundant testimony tending to prove in a most conclusive manner that the sale was a sham and not a serious transaction, and that, in effect, the con-

veyance would work advantageously to the parties of age, and could only and did entail injury to the minors.

The testimony of Messrs. Generes and Millaudon shows pointedly that Leonce Burthe paid into the hands of these witnesses, as tutors of the minors, intervenors, the proportion of the rent of said property, and that they, as tutors, paid their proportion of taxes, insurances, &c., and that said minors never ceased to be the owners of said property.

118 It must be borne in mind that in the act by which L. Burthe grants a mortgage to A. Chiappella, president of the Union Insurance Company, the former hypothecates only his share in said property, and not the whole of it, acknowledging as a matter of inference that the remaining part of the property did not belong to him.

The article 3298 of the civil code of L'a declares that the mortgage of the minor or married woman exists without being recorded, not only upon the property of the tutor, (co-husband,) but also upon the property of others, when the law grants a tacit mortgage, either general or special.

By the terms of the act 3152, civil code, the privileges in favor of minors and married women are strecti juris.

Then it is evident that if the intervenors, being minors, were mere creditors of Leonce Burthe, they would have a tacit mortgage on the property libelled that no person, not even a court of justice, could erase. Now, a postiori, would the assertion here made hold good, when it is considered that the intervenors are part owners of the property libelled; and how is it possible to deprive them of this property, the confiscation act having no bearing upon nor application to this peculiar case?

119 But the United States will say that Leonce Burthe, having granted a lease of the property to an enemy of the United States national government, all the liens and mortgages upon this property were extinguished, and the proceeds of the sale of that property must enure exclusively to the use and benefit of the United States.

To examine the last part of this case thoroughly, and extend upon it, would require much time, and to elucidate its points and bearings would demand a long and elaborate argument.

To sum up and conclude, we have no hesitation in saying:

1st. That we never authorized him to grant a lease of said property.

2d. That none of the acts of L. Burthe can be binding upon us.

3d. That L. Burthe had no mandate or authority to dispose of our property. He has done so without our knowledge or consent, and we were incapacitated by law from assenting to anything in the premises.

Finally, if Burthe has thought proper to act without right of any kind whatsoever, how can we be responsible, unless it is decided that a minor, who is loyal to his government, may have his property confiscated through the wrongs of others over whom the minor has

120 nor authority nor control?

Respectfully submitted.

(Signed) L. CASTERA, *for Intervenor.*

Judgment, from the minutes of July 17th, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

For the reasons orally assigned by the court, it is ordered, adjudged, and decreed that the square of ground bounded by New Levee, South Market, Fulton and Delord streets, with the buildings and improvements thereon, with the exception of four twenty-fifth parts thereof, be and the same are hereby condemned as forfeited to the United States.

It is further ordered, that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on
121 5th September, 1865, and that upon the return the proceeds be distributed according to law.

It is further ordered, adjudged, and decreed that there be judgment in favor of the minors Burthe, recognizing them as the lawful owners of four twenty-fifth parts of the libelled property, in the following proportion, to wit:

Edmund Burthe, two twenty-fifth parts; Paul Louis Burthe, one twenty-fifth part; and Dominique Francois Burthe, one twenty-fifth part; and that, so far as the libel affects said four twenty-fifth parts, the same be dismissed and the seizure released.

It is further ordered, adjudged, and decreed that the interventions of Pierre Leopold Burthe, of Mrs. Marguerite Felicie Burthe, wife of Louis Frederic Foucher, and of Mrs. Marguerite Suzanne Delord Sarpy, widow of the late Andre Burthe d'Amelet, as well as the intervention of the Union Insurance Company and that of Crafts J. Wright, be dismissed with costs.

Judgment rendered July 17th, 1865.

Judgment signed July 22d, 1865.

(Signed) E. H. DURELL, *Judge*.

122 *Affidavit of A. Chiappella, filed July 25, 1865.*

THE UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

In the honorable the circuit court of the United States for the sixth circuit and eastern district of Louisiana.

Achille Chiappella, being duly sworn, says that in the month of April, 1860, he made a loan to the commercial firm of Burthe & Higgins, of New Orleans, of a sum of seven thousand dollars, which was made without interest or security, as is usual in commercial intercourse on very short loans, the said Burthe & Higgins having promised to return the amount in a few days. However, no part of it was returned until a few months after, viz., on the twenty-second day of October, 1860, when Burthe & Higgins returned him, on account of said loan, the sum of three thousand five hundred dollars, being an equal amount due and unpaid, which it was promised

123 should be refunded in a very brief delay. This promise was not complied with, and finally, on being pressed by this affiant, the aforesaid Leonce Burthe, one of the members of the said firm of Burthe & Higgins, offered to give affiant a mortgage on his individual property to secure the balance of three thousand five hundred dollars. This offer, verbally made, was at once accepted at a date somewhat more than a month before the eighth day of October, 1861, and was only delayed to be put in proper shape by reason of the confidence which existed between this affiant and the said Leonce Burthe, who were warm personal friends and relatives.

That on this eighth day of October, 1861, the act of mortgage was made from Leonce Burthe to affiant, as president of the Union Insurance Company, on the then undivided twenty-fifths parts of the property which has been libelled in this suit.

Affiant further swears that as he verily believed that his mortgage was good, the same having been taken by him in good faith and without any reference to the insurrection or any knowledge that the mortgaged property was to be used for insurrectionary purposes, he did not heretofore communicate the fact now disclosed as to

124 matters antecedent to the mortgage to his counsel.

(Signed) A. CHIAPELLA.

Sworn to and subscribed before me this 25th day of July, 1865.

(Signed) F. B. VINOT, *Deputy Clerk.*

Rule for a new trial by Union Insurance Company, and order dismissing the same.—From the minutes July 25th, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

On motion of Durant and Hornor, of counsel for Achille Chiappella, president of the Union Insurance Company, claimants and intervenors, and on submitting an affidavit of said Chiappella, it is ordered by the court that the United States district attorney show cause, on the day of , 1865, at 11 o'clock a. m., why the

125 new trial should not be ordered in this case, on the ground that on the full statement of the facts of the case as they exist, substantial justice has not been done to the said claimants.

And service being accepted and the rule submitted,

Ordered, that the same be dismissed with costs.

Petition of appeal, filed July 27, 1865.

UNITED STATES
vs.
COOKS' GUN FACTORY, property of Leonce Burthe. } No. 3542.

In the circuit court of the United States for the sixth circuit and eastern district of Louisiana.

The petition of Achille Chiapella, president of the Union Insurance Company, who are claimants of a portion of the property libelled

in the abovenamed cause, respectfully represents that he is
126 informed and believes there is error to his prejudice in the judgment rendered against him in this cause on the seventh day of July, 1865; and he desires to be permitted to appeal suspensively from said judgment, on giving bond to operate as a supersedeas.

Wherefore he prays an appeal to the next term of the Supreme Court, to operate as a supersedeas and stay of execution, on his giving bond conditioned as the law directs for such an amount as the court may deem sufficient.

And he prays for all general relief.

(Signed) DURANT & HORNOR, *Attorneys.*

7th 26,'65.

Order on the above petition.

Let an appeal, to operate as a supersedeas so far as three twenty-fifth parts of the libelled property claimed by the Union Insurance Company are concerned, be allowed as prayed for, returnable to the Supreme Court of the United States the 1st Monday of December next, the appellant giving bond in the sum of three thousand five hundred dollars, being the amount agreed upon between the
127 libellants and the claimant, with good and solvent security, conditioned as the law directs.

(Signed) E. H. DURELL, *Judge.*

July 27, 1865.

Bond for appeal, filed July 27, 1865.

Know all men by these presents, that we, Achille Chiappella, president of the Union Insurance Company, as principal, and A. Conetin, are held and firmly bound, jointly and severally, unto the United States of America and others in the sum of three thousand five hundred dollars lawful money of the United States of America, to be paid to the said United States of America and others, their heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated the 27th day of July,
128 in the year of our Lord eighteen hundred and sixty-five.

Whereas Achille Chiappella, president of the Union Insurance Company, has this day presented a petition to the honorable the circuit court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana, praying an appeal to the next term of the Supreme Court of the United States from the final judgment rendered in the case of the United States *vs.* Cook and Brother's Gun Manufactory, No. 3542 of the docket of said circuit court, dismissing the claim and intervention of the present appellants and intervenors, which said judgment was rendered on the 17th and signed on the 22d July, 1865.

Now the condition of the above obligation is that we, the above-bounden Achille Chiappella, president, &c., and A. Contin, will well

and truly pay to the said United States and others, the defendants in said appeal, all such damages as they may recover against us, in case it should be decided that the said appeal was wrongfully obtained.

(Signed) A. CHIAPPELLA. [L. S.]
A. CONTIN. [L. S.]

129 Signed, sealed, and delivered in presence of—
(Signed) F. B. VINOT, *Deputy Clerk.*

Alphonse Contin, the surety on the within bond, being duly sworn, says he is worth the sum of three thousand five hundred dollars over and above all his debts and liabilities.

(Signed) A. CONTIN.

Sworn to and subscribed this 27th July, 1865, before me.
(Signed) F. B. VINOT, *Deputy Clerk.*

Writ of venditioni exponas.

United States circuit court, sixth circuit and eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

130 Whereas at a circuit court of the United States holden at New Orleans, for and within said district, on the seventeenth day of July, 1865, the square of ground bounded by New Levee, South Market, Fulton and Delord streets, together with all the buildings and improvements thereon, with the exception of four twenty-fifth parts thereof, have been condemned as forfeited to the United States, and ordered to be sold at public auction; and whereas the Union Insurance Company has obtained a suspensive appeal as to three other twenty-fifth parts of said property claimed by them, as it appears from the annexed copy of the petition and order of appeal, to which your special attention is directed: These are, therefore, to command you to sell to the highest bidder, at public auction, at the Merchant's Exchange, 18 Royal street, within said district, on the fifth day of September, 1865, at 12 o'clock m., the said property, first giving thirty days' notice at least of the time and place of sale by advertising the same in the N. O. Picayune, one of the daily newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale, the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this
131 case directs. And make due return hereof with your doings herein.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 31st day of July, A.D. 1865, and 90th year of the independence of America.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Copy of petition of appeal annexed to said venditioni exponas.

In the circuit court of the United States for the sixth circuit and eastern district of Louisiana.

THE UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACT'Y, (property of Leonce Burthe.) } No. 3542.

The petition of Achille Chiappella, president of the Union Insurance Company, who are claimants of a portion of the property libelled in the abovenamed cause, respectfully represents that he is informed and believes there is an error to his prejudice in the
132 judgments rendered against him in this cause on the seventeenth day of July, 1865, and he desires to be permitted to appeal suspensively from said judgment, on giving bond to operate as a supersedeas.

Wherefore he prays an appeal to the next term of the Supreme Court, to operate as a supersedeas and stay of execution, on his giving bond conditioned as the law directs for such an amount as the court may deem sufficient; and he prays for all general relief.

(Signed) DURANT & HORNOR, *Attorneys.*

Let an appeal to operate as a supersedeas, so far as three twenty-fifth parts of the libelled property claimed by the Union Insurance Company are concerned, be allowed as prayed for, returnable to the Supreme Court of the United States the first Monday of December next, the appellant giving bond in the sum of three thousand five hundred dollars, being the amount agreed upon between the libellants and the claimant, with good and solvent security, conditioned as the law directs.

July 27th, 1865.

(Signed) E. H. DURELL, *Judge.*

133 CLERK'S OFFICE.

I certify the foregoing to be true copies of the originals on file in this office.

Witness my hand and seal of said court, at New Orleans, this 29th day of July, 1865.

[SEAL.] (Signed) F. B. VINOT, *Deputy Clerk.*

Copy of judgment.

Circuit court of the United States, sixth circuit and eastern district of L'a, April term, 1865.—New Orleans, Monday, July 17th, 1865.

Court met pursuant to adjournment. Present, Hon. Edward H. Durrell, district judge.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

For the reasons orally assigned by the court—

134 It is ordered, adjudged, and decreed that the square of ground bounded by New Levee, South Market, Fulton and

Delord streets, with the buildings and improvements thereon, with the exception of four twenty-fifth parts thereof, be, and the same are hereby, condemned as forfeited to the United States.

It is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on 5th September, 1865, and that upon the return thereof the proceeds be distributed according to law.

It is further adjudged and decreed that there be judgment in favor of the minors Burthe, recognizing them as the lawful owners of four twenty-fifth parts of the libelled property, in the following proportion, to wit: Edmund Burthe two twenty-fifth parts, Paul Louis Burthe one twenty-fifth part, and Dominique Francois Burthe one twenty-fifth part; and that, so far as the libel affects said four twenty-fifth parts, the same be dismissed and the seizure released.

It is further adjudged and decreed that the interventions of Pierre Leopold Burthe, of Mrs Margaret Felicie Burthe, wife of Louis Frederic Foucher, and Mrs. Marguerite Suzanne Delord Sarpy, widow of the late Andre Burthe d'Amelet, as well as the intervention
135 of the Union Insurance Company and that of Crafts J. Wright, be dismissed with costs.

Judgment rendered July 17th, 1865.

Judgment signed July 22d, 1865.

(Signed) E. H. DURELL, *Judge.*

CLERK'S OFFICE.

A true copy of the original of record in this office.

New Orleans, July 29th, 1865.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Office of Mortgages.—Certificate annexed to said venditioni exponas.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records of this office there are no other mortgages standing in the name of Cook & Brothers and Leonce Burthe, and recorded against the property described in the printed slip, than the following, to wit:

B. 56, fo. 430. The one resulting from the inscription of a promissory note drawn by F. W. C. Cook, dated 26th Dec.,'49, and
136 recorded 2d Feb'y, 1850, $3,644 80.

U. S. marshal's sales.

In the United States circuit court for the sixth circuit and eastern district of Louisiana, No. 3542.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY.

By virtue of a writ of venditioni exponas to me directed in the above-entitled suit, I will proceed to sell to the highest bidder on Tuesday, the 5th day of September, 1865, at 12 o'clock m., at the Merchants' and Auctioneers' Exchange, No. 18 Royal st.:

The undivided eighteen twenty-fifths of the square of ground situated in the first district of this city, in the square bounded by New Levee, South Market, Fulton and Delord streets, together with the buildings and improvements thereon, as per decree and order of the abovenamed court, dated, respectively, July 17th and 27th, 1865, copies of which are of record in the clerk's office, and on file in my office for reference.

Terms, cash at time of adjudication, in U.S. treasury notes.

United States marshal's office, New Orleans, 31st day of July, 1865.

CUTHBERT BULLITT, *United States Marshal.*

B. 78, f'o 227. The one granted by F. W. C. and F. L. Cook in favor of the Confederate States for $150.000, interests and costs, per act before S. Maguer, notary, on the 17th Ap'l, 1862.

B. P. 1, f'o 370. The privilege in favor of the 2d draining district.

B'k I. M. No. 7, f'o 478, recorded on the 24th November, 1863. The general one in favor of this city, resulting from a judgment rendered by the 3d district court on the 3d December, 1852, for the sum of $133 00, with interest stipulated in said judgment, and costs of suit, against F. W. Cook.

B'k I. M. No. 10, f'o 354. The general one in favor of E. W. Sewell, recorded on the 5th Febr'y, 1859, resulting from a judgment rendered by the 6th district court on the 10th January, 1859, for the sum of $600 and no cents, with interest stipulated in said judgment, and costs of suit, against W. C. Cook and *al.*

B'k I. M. No. 10, f'o 358. The general one in favor of Jacob Barker, recorded on the 14 February, 1859, resulting from a judgment rendered by the 6th district court on the 24 Jan'y, 1859, for the sum of $165, with interest stipulated in said judgment, and costs of suit, against F. L. Cook.

137 B'k I. M. No. 10, f'o 415. The general one in favor of J. McWilliams, recorded on the 16th June, 1859, resulting from a judgment rendered by the 2d district court on the 1st June, 1859, for the sum of $661 and 73 cents, with interest stipulated in said judgment, and costs of suit, against F. L. Cook and F. Cook.

B'k I. M. No. 10, f'o 701. The general one in favor of Kendall, Holbrook & Co., recorded on the 22 May, 1861, resulting from a judgment rendered by the 4th district court on the 15 Ap'l, 1861, for the sum of $471, with interest stipulated in said judgment, and costs of suit, against both Cooks.

B'k I. M. No. 11, f'o 106. The general one in favor of Charles Kock & Co., recorded on the 29th January, 1863, resulting from a judgment rendered by the 4th district court on the 13th January, 1863, for the sum of $3,652 and 32 cents, with interest stipulated in said judgment, and costs of suit, against F. W. Cook and *als.*

B'k I. M. No. 11, f'o 276. The general one in favor of Union Insurance Co., recorded on the 9th Ap'l, 1864, resulting from a judgment rendered by the 6th district court on the 5th April, 1864, for

the sum of $2,737 and 74 cents, with interest stipulated in said judgment, and costs of suit, against Leonce Burthe.

138 B'k I. M. No. 11, f'o 277. The general one in favor of Abat Generes, recorded on the 9th April, 1864, resulting from a judgment rendered by the 6th district court on the 5th April, 1864, for the sum of $4,129 and 46 cents, with interest stipulated in said judgment, and costs of suit, against Leonce Burthe.

B'k I. M. No. 11, f'o 340. The general one in favor of Crafts J. Wright, recorded the 25th April, 1864, resulting from a judgment rendered by the circuit court on the 25th April, 1864, for the sum of $8,247 and 7 cents, with interest stipulated in said judgment, and costs of suit, against Leonce Burthe.

New Orleans, September 6th, 1865.

(Signed) CHARLES E. LENES, *D'y Recorder.*

Marshal's return on venditioni exponas, filed Oct. 3d, 1865.

United States circuit court, 6th circuit and eastern district of Louisiana.

U. S. MARSHAL'S OFFICE,
New Orleans, Sept'r 27th, 1865.

Pursuant to this precept I have caused the property within
139 named to be sold at public auction, and to the highest bidder, at the Merchants' and Auctioneers' Exchange, No. 18 Royal street, on the day and hour therein directed, having given full thirty days' notice of the time, place, and manner of sale in the N. O. Picayune, one of the daily papers printed and published in New Orleans, and by the crier at the hour and place of sale. At such sale (having had due regard to the copy of the judgment and the petition of appeal, both hereto annexed) the purchaser was Louis F. Generes, who bought the undivided eighteen twenty-fifths of the property as described within for seven thousand five hundred dollars.

Whereby the gross proceeds of the abovenamed sale amounted to seven thousand five hundred dollars, which I pay over to C. Claiborne, esq., the clerk of the U. S. circuit court, to be disposed of as the court directs.

(Signed) A. BAUDOUIN, *Ch. Deputy.*

$7,500.

Received of Cuthbert Bullitt, U. S. marshal, seven thousand five hundred dollars, being, as he saith, the gross proceeds of the foregoing sales, the moneys to be disposed of as the court directs, and for which I have signed duplicate bills.

(Signed) F. B. VINOT, *D'y Clerk.*

New Orleans, October 3d, 1865.

140 Appraiser's report filed September 5th, 1865.

United States appraiser's report, confiscated property, etc.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

To the honorable circuit court for the eastern district of Louisiana:

We, the undersigned appraisers to this honorable court, duly appointed and sworn, have the honor to report, that on the fourth day of September, 1865, we proceed to inspect the below-described property, for the purpose of ascertaining its value at this time, and after a careful and thorough examination find that the present cash value is as set opposite the property below.

$\frac{18}{25}$, interest at ten thousand eight hundred dollars, $10,800; $\frac{2}{3}$, $7,200.

(Signed) H. G. HEARTT,
(Signed) SAM'L L. HILL,
U. S. Appraisers, New Orleans.

In the United States circuit court for the sixth circuit and eastern district of Louisiana.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.

By virtue of a writ of venditioni exponas to me directed in the above-entitled suit, I will proceed to sell to the highest bidder, on Tuesday, the fifth day of September, 1865, at 12 o'clock m., at the Merchants' and Autioneers' Exchange, No. 18 Royal street, the undivided eighteen twenty-fifths of the square of ground situated in the first district of this city, in the square bounded by New Levee, South Market, Fulton and Delord streets, together with the buildings and improvements thereon, as per decree and order of the abovenamed court, dated, respectively, July 17th and 27th, 1865, copies of which are on record in the clerk's office, and on file in my office for reference.

Terms, cash at the time of adjudication, in U. S. treasury notes.

United States marshal's office, New Orleans, 31st day of July, 1865.

CUTHBERT BULLITT, *United States Marshal.*

141 United States circuit court.

Appraiser's bill, filed September 5th, 1865.

UNITED STATES
vs.
COOK & BROTHER'S GUN MANUFACTORY. } No. 3542.—Confiscated property.

Appraisers' department to appraiser's office, Dr.

H. G. Heartt and S. L. Hill, for examination, appraisement, $7,500 at 1 per cent. $75 00

142 THE UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

The President of the United States to Crafts J. Wright, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein the Union Insurance Company, claimants and intervenors, are appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

143 *Marshal's return.*

Received August 1st, 1865; and on the 2d day of the same month and year served a copy of this citation on C. J. Wright, the defendant named herein, by leaving it in the hands of J. P. Sullivan, esq., personally, one of the firm of Sullivan, Billings & Hughes, esq'rs, attorneys for C. J. Wright, named herein, who is absent from this city.

J. J. PREIS, *Dep'y U. S. Marshal.*
SULLIVAN, BILLINGS & HUGHES, *Atty's.*

New Orleans, August 8th, 1865.

144 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washton on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein the Union Insurance Company, claimants and intervenors, are appellants, and the United States of America are defendants, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

145 *Marshal's return.*

Received August 1st, 1865; and on the 1st day of August, 1865, served a copy of this citation on Rufus Waples, esq'r, United States attorney for the eastern district of Louisiana, in person, at his office in the custom-house building, in the city of New Orleans.

Ret'd Aug. 8th, 1865.

J. J. PREIS, *Deputy U. S. Marshal.*

146 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Pierre Leopold Burthe, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein the Union Insurance Company, claimants and intervenors, are appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

147 *Marshal's return.*

Received August 1st, 1865; and on the 7th day of same month and year served a copy of this citation on Victor Burthe, brother, administrator, and agent for Leopold Burthe, deceased, the defendant named herein, said service being made at the office of said Victor Burthe, on Bourbon street, bet'n St. Louis and Toulouse streets, in the city of New Orleans.

J. J. PREIS, *Dep. U. S. Marshal.*

New Orleans, August 8th, 1865.

LOUIS CASTERA, Esq., *Att'y.*

148 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Mrs. Marguerite Felicie Burthe, wife of Louis Frederick Foucher, and said Foucher to authorize his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louis-

iana, wherein the Union Insurance Company, claimants and intervenors, are appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

149 *Marshal's return.*

Received August 1st, 1865; and on the 8th day of same month and year served a copy of this citation on the defendant, Mrs. Margaret F. Burthe, by leaving it at the office of her attorney, L. Castera, esq., in the hands of F. Grima, esq., who is a partner of L. Castera, esq., now temporarily absent from New Orleans, said defend't, Margaret F. Burthe, being out of the State of Louisiana.

J. J. PREIS, *Deputy U. S. Marshal.*

New Orleans, August 9th, 1865.

150 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Henry Clement Millaudon, acting as dative tutor of the minor Dominique Francois Edmond Burthe, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein the Union Insurance Company, claimants and intervenors, are appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the partias in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

151 *Marshal's return.*

Received August 1st, 1865; and on the 5th day of same month and year served a copy of the within citation on Henry C. Millaudon, personally, he acting as dative tutor to the minors herein named as the defendants in this suit, said service being made at his office in Bourbon street, bet'n St. Louis and Toulouse streets, in this city.

J. J. PREIS, *Dep'y U. S. Marshal.*

New Orleans, August 8th, 1865.

152 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Louis Florval Generes, acting as attorney in fact of, 1°., Mrs. Justine Theodorine Abat, widow of the late Joseph Antoine Henry Burthe, and now the wife of Francois Eugene Garrean, the natural tutrix of her two minor children, Francois Joseph Paul Louis Burthe and Dominique Francois Burthe; 2°., Mrs. Marguerite Suzanne Delord Sarpy, widow of the late Andre Burthe d'Amelet, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein the Union Insurance Company, claimants and intervenors, are appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

153 *Marshal's return.*

Received August 1st, 1865; and on the 5th day of same month and year served a copy of this citation on Louis Florval Generes, personally, he acting as attorney in fact of the defendants named herein, said service being made at the office of Abat & Generes, in Royal street, No. 47, in this city.

J. J. PREIS, *Dep'y U. S. Marshal.*

New Orleans, August 8th, 1865.

154 Circuit court of the United States, sixth circuit and eastern district of Louisiana.

UNITED STATES OF AMERICA:

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 153 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of United States *vs.* Cook & Brother's Gun Manufactory, No. 3542 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18th day of October, A. D. 1865.

CH'S CLAIBORNE, *Clerk.*

I, Edward H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the